

CONSOLIDATED HEARINGS BOARD

IN THE MATTER OF Sections 2 and 3 and 6 (3) of the Consolidated Hearings Act, 1981, S.O. 1981, c.20;

— and —

IN THE MATTER OF Section 12(2) of the Environmental Assessment Act, R.S.O. 1980, c.140;

— and —

IN THE MATTER OF Sections 30, 35 and 38 of the Environmental Protection Act, R.S.O. 1980, c.141, as amended;

— and —

IN THE MATTER OF Sections 24 and 61 (2) of the Ontario Water Resources Act, R.S.O. 1980, c.361, as amended;

— and —

IN THE MATTER OF Section 28 (3) of, and Regulation 164 under, the Conservation Authorities Act, R.S.O. 1980, c.85, as amended;

— and —

IN THE MATTER OF Section 40(12) of the Planning Act, S.O. 1983, c.1, as amended; in connection with site plan control of the sanitary landfill site;

— and —

IN THE MATTER OF Section 22(1) of the Planning Act, 1983 in connection with a referral to this Board by the Honourable Bernard Grandmaitre, Minister of Municipal Affairs, on a request by the Regional Municipality of Halton to amend the Official Plan for the Town of Milton to redesignate a parcel of land comprising Part Lots 3 and 4, Concession 2 N.S. in the Town of Milton from "Agriculture" and "Conservation and Hazard Lands" to permit the construction, operation and maintenance of a landfill site, Minister's File No. 24-QP-0208-A01;

— and —

IN THE MATTER OF Section 34(11) of the Planning Act, 1983 in connection with an appeal to this Board by the Regional Municipality of Halton for an order directing an amendment to By-law 61-85 of the Town of Milton to rezone the lands situated at Lot 3 and part of Lot 4, Concession 2 N.S., in the Town of Milton from "Agriculture" to permit a regional sanitary landfill site and ancillary uses;

— and —

IN THE MATTER OF Section 15(1) of the Planning Act, R.S.O. 1980 ch.379 in connection with a referral by the Honourable Claude F. Bennett, Minister of Housing on a request by Tremaine Britannia Citizen's Group for consideration of part of the Official Plan for the Halton Planning Area with respect to Sections 1 to 5 inclusive, 7, 9 and 10 of Part III D3 Solid Waste Management, Minister's File No. OPC-0026;

— and —

IN THE MATTER OF Section 64 of the Ontario Municipal Board Act, R.S.O. 1980, c.347 as amended in connection with an application by the Regional Municipality of Halton for an order approving:

a) the acquisition of land for the construction, operation and maintenance of a sanitary landfill site to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton and to do so by one of two alternative methods as follows:

- (i) landfilling at the site referred to in Halton's Environmental Assessment as Site F in the City of Burlington;
- (ii) landfilling at the site commonly referred to in Halton's Environmental Assessment as Site D in the Town of Milton

at an estimated cost of \$12,775,000.00, and the borrowing of money by way of temporary advances not exceeding in the aggregate such estimated cost pending the sale of debentures, and

(b) the issuance of necessary debentures to a maximum of \$12,775,000.00 for a term not to exceed fifteen years;

— and —

IN THE MATTER OF Section 193(5) and Paragraph 84 of Section 210 of the Municipal Act, R.S.O. 1980, c.302, as amended;

— and —

IN THE MATTER OF Sections 6, 7 and 8 of the Expropriations Act, R.S.O. 1980, c.148;

— and —

IN THE MATTER OF an undertaking of the Regional Municipality of Halton to provide facilities for the purpose of receiving, dumping and disposing of waste as required by section 137 of the REGIONAL MUNICIPALITY OF HALTON ACT, R.S.O. 1980, c.436, as amended, by acquiring the land for, constructing, operating and maintaining a landfill to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton.

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HELD AT: Oakville, Ontario

DATE: March 9, 1988

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I N D E X

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BEFORE: H. H. Lancaster, Q.C. - Chairman

Dr. D.J. Kingham - Member



Hearing conducted at The Oakville
Granary Commercial Centre, 105 Robinson
Street, Oakville, Ontario, on
March 9, 1988.

VOLUME 103

APPEARANCES:

T.R. Lederer and H.D. Hodgson	for the Regional Municipality of Halton (Proponent)
J.R. Tidball	for the Ministry of the Environment
T. Vigod J.F. Castrilli	for the West Burlington Citizens Group
D. Estrin, F.E. Leitch and H. Dahme	for the Corporation of the Town of Milton
S.R. Garrod and A. Nurvo	for the Milton Area Citizens Coalition and several affected Milton area landowners
R.B. Tuer, Q.C. E.A. Cronk and F. Perrier	for National Sewer Pipe Limited
L.F. Longo	for Azova Investments Limited
M.J. McQuaid, Q.C. and C.J. Tzekas	for the City of Burlington
C. Mansfield	for the Ministry of Natural Resources
P. Renaud	for Cumis



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Toronto, Ontario

APPEARANCES (Cont'd):

1	C. Stevenson	for Framgar Holdings,
2	P. Hancock	Fosseri Investments
3		Limited, Seriphos
4		Investments Limited and
5		Topic Investments
6	J.H. Olah	for the Halton Region
7		Conservation Authority

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Per: C.F. Nethercut, C.V.R.



Oakville, Ontario.
March 9, 1988.

--- Upon commencing at 9:30 a.m.

MR. LANCASTER: Thank you. Please be seated.

MICHAEL JOHN (MAX) BACON, resumed:

MR. LANCASTER: Ms. Wong, do you expect Mr. Leitch here this morning?

MS. WONG: No, I don't.

EXAMINATION-IN-CHIEF BY MS. CRONK (cont'd):

MS. CRONK: You will recall yesterday after the afternoon break, we provided to the Board a copy of some of the additional background correspondence relating to the early years, 1981 and 1982 and I indicated there was another document which I did not then have available and which I would wish to put to Mr. Bacon and bring to your attention.

Q. I am showing you a copy of a letter dated August 11, 1981, expressed to be from the Corporation of the City of Burlington to the Regional Municipality of Halton and to which is attached a report dated August 10, 1981 from the Solid Waste Management Committee of the City of Burlington, and I would ask you if you have seen that before?

A. I have.



1 MS. CRONK: I would ask that be the next
2 exhibit.

3 MR. LANCASTER: Is this a letter or the
4 report?

5 MS. CRONK: Both.

6 MR. LANCASTER: They are both together.
7 N-603.

8 --- EXHIBIT NO. N-603: Letter dated August 11,
9 1981 from the City of
10 Burlington enclosing report
11 of the Solid Waste Manage-
ment Committee to the
Region of Halton.

12 MS. CRONK: Q. Could you outline for
13 the Board what you consider to be relevant from the
14 contents of that letter?

15 A. It thanks Mr. Perlin for his
16 letter of December 12, and notes that the position of
17 the City of Burlington is a preliminary one and in
18 order to assist the Region in addressing the
19 application in an appropriate manner and saying that
20 when they had the results of the final report from
21 their consultants, which was Acres, they would provide
22 a further position of the City and then the Solid Waste
23 Management Committee's recommendation is attached to
24 that and it sets out a series of conditions, I guess,
25 and:

"The City of Burlington is prepared to



1

consider the establishment of a landfill
site on the National Sewer Pipe Limited
lands lying between Bayview Park and..."

2

3

4

so on:

5

"... provided that:

6

the additional study of Hydrogeology of
the site proves conclusively that the
National Sewer Pipe can be made

7

8

9

(safe)... the Council of the City of

10

Burlington, after consideration of the

11

...application submitted by (us),

12

concludes that the site is appropriate

13

for the land use;

14

terms and conditions suitable to the

15

City of Burlington, and to be set out

16

following full disclosure of the

17

proposal by National Sewer Pipe Limited,

18

can be arrived at regarding the

19

operation of the site, these operational

20

aspects to include, but not be limited

21

to, public vs. private operation,

22

leachate management, perpetual care and

23

environmental protection."

24

Those conditions obviously -- I

25

shouldn't say obviously, but they were considered



1 reasonable and we were working on a lot of those
2 things. It wasn't that we weren't willing to disclose
3 them, because we were undertaking an environmental
4 appraisal at that time or had started work, and were
5 during the design report which we have submitted as an
6 exhibit.

7 However, when we came to the last
8 conditions, Nos. d), e) and f), it said that the same
9 review and approval process was to be applied to this
10 site as to all other landfill sites developed or
11 selected to serve the landfill needs of the Region of
12 Halton, and that appeared to suggest that they were
13 asking for us to be under the Environmental Assessment
14 Act rather than the Environmental Protection Act,
15 which we were at that time and subsequently confirmed
16 by the Minister, Minister Norton, said was not legally
17 required and it could be declared by the Minister or by
18 the Cabinet, the Lieutenant-Governor-in-Council and
19 that appeared to us to be incredibly onerous, because
20 the cost to a private entrepreneur to search the whole
21 area would be enormous.

22 Secondly, under e):

23 "National Sewer Pipe agree that none of
24 the lands held currently by National
25 Sewer Pipe between the proposed site and



1 present residential areas be permitted
2 to develop during the lifetime of the
3 proposed landfill operation."

4 You will remember that National Sewer
5 Pipe owns substantial areas of land east of King Road
6 over here and over to the east of the hydro line and it
7 has now a residential proposal going forward, and it
8 also owned a substantial chunk of land south of Highway
9 403 and west of King Road and north of the residences
10 there, so effectively Burlington was saying those lands
11 are sterilized during the lifetime of the proposed
12 landfill operation, which we thought might be fifteen,
13 twenty or more years, depending upon the amounts of
14 fill that went in there. Lastly:

15 "The Region of Halton has available one
16 or more approved landfill options within
17 the Region outside the area of Site A,"
18 which was the NSP site. That meant effectively that
19 only Burlington garbage could go into that site.

20 We felt these were unreasonable
21 conditions or certainly very tough conditions and had
22 an enormous impact on the proposal.

23 Q. Thank you, Mr. Bacon. One of the
24 other outstanding matters from yesterday, Mr. Chairman,
25 is that you will recall I had referred Mr. Bacon to the



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2 things. It wasn't that we weren't willing to disclose
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18 which was the NSP site. That meant effectively that
19 only Burlington garbage could go into that site.

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21 conditions or certainly very tough conditions and had
22 an enormous impact on the proposal.

23 Q. Thank you, Mr. Bacon. One of the
24 other outstanding matters from yesterday, Mr. Chairman,
25 is that you will recall I had referred Mr. Bacon to the



1 Acres consulting report commissioned by the City of
2 Burlington, and which was delivered in September of
3 1982 and I asked you to reserve an exhibit number for
4 the covering letter from that report and this is the
5 covering letter.

6 MR. LANCASTER: That was N-596, I
7 believe, the letter of September 17.

8 MS. CRONK: Yes.

9 Q. You will recall I drew your
10 attention yesterday to this covering letter and this
11 related to the Acres Consulting report delivered, as we
12 can see from the covering letter, in September of 1982.
13 Did you as well see an earlier interim report from
14 Acres Consulting prepared for the City?

15 A. We did.

16 Q. I am showing you a copy of what is
17 styled to be an interim report, Solid Waste Management
18 Strategy Study, City of Burlington, dated August, 1981
19 and I direct your attention to Section 4.3 entitled
20 Highlights of Consultation. Would you review that and
21 indicate whether there is anything contained in that
22 section of the report that you regard as relevant?

23 A. Yes, Mr. Chairman. Acres did a
24 fairly comprehensive job as far as we were able to
25 gather and certainly set out in this report of



1 canvassing the views of members of Council and various
2 other officials and so on in connection with this
3 study. They set this out in Section 4.3 entitled
4 Highlights of Consultation and it starts by saying
5 that:

6 "Each Burlington Solid Waste Management
7 Committee member and selected City and
8 Regional staff were provided an
9 opportunity to express individual
10 opinions on the strengths and weaknesses
11 of the Regional Waste Management Policy
12 and the NSP proposal. Following are a
13 few of the more relevant observations."

14 It goes through a whole series of things and of
15 particular interest to us was that:

16 "Most individuals commented that their
17 basic objective is... to get away from
18 landfill as much as possible -- some
19 feel strongly that a publicly owned
20 landfill site is preferable and that
21 Site F, (a proposed public site), should
22 be in place before the private NSP
23 proposal is approved to provide backup
24 facilities."

25 You will remember this was during the time we were



1 trying to determine, both with the Region and with the
2 City, precisely what the problem was, what they wanted
3 us to do and what conditions they wanted to attach and
4 of course the conditions come forward in part in that
5 resolution of City Council. So, we were constantly up
6 in the air trying to satisfy the Ministry of Municipal
7 Affairs & Housing on the amendment to the Parkway Belt
8 West Plan and drafting that and trying to find out
9 really what Burlington wanted.

10 You will remember I suggested
11 that there might be three levels of policy, the Parkway
12 Belt West Plan, the Region and so on, and this further
13 added to the difficulty of understanding precisely what
14 everybody did want. We were not only in a delay
15 situation, because nothing was really happening, but we
16 couldn't really find out what everybody wanted, and
17 this gave us a great deal of food for thought when it
18 said that;

19 "Some feel strongly that a publicly
20 owned landfill site is preferable and
21 that Site F, (the Tremaine-Britannia
22 Road one) should be in place before the
23 private NSP proposal is approved to
24 provide backup facilities."

25 DR. KINGHAM: Where are you reading that



1 from?

2 THE WITNESS: The bottom of page 32 of
3 the Acres report.

4 MS. CRONK: The interim Acres Report
5 which has not been filed.

6 THE WITNESS: August, 1981, which was
7 shortly after we filed our application in July.

8 MS. CRONK: I will see, sir, that copies
9 are made of the pages he has referred to.

10 DR. KINGHAM: It's those words and your
11 words of now saying that it created confusion as to
12 exactly what was wanted in the face of the August 11,
13 1981 letter that seems to be quite specific.

14 THE WITNESS: That is correct. It was a
15 bit like shovelling smoke, because we could never get
16 to the bottom of the matter.

17 To start with I thought, and I was
18 attending some City Council meetings and I did
19 throughout the following winter, that Burlington
20 thought that an amendment to the Official Plan -- the
21 Parkway Best West Plan was necessary for both public
22 and private, both public and private operation, and
23 then it changed to well, this is what my perception was
24 at least, it was only for a private operation and you
25 will remember there are a series of letters from



1 Burlington to the Minister and the Minister to us and
2 us to the Minister and so on, and we finally buckled
3 under, although I never thought, and said so in
4 writing, that it really was necessary to have an
5 amendment, certainly not for the Region and I didn't
6 think for us either. All these things concerned us
7 because we were perfectly prepared at all times to say
8 what do you want and we will discuss these things and
9 come to a reasonable agreement, even if it meant that
10 we didn't get formally all the Halton garbage. We
11 thought that there was an entrepreneurial opportunity
12 there and at one stage we discussed all sorts of
13 options, but what we really wanted was for Burlington
14 to say that these are the things we want to put in the
15 Official Plan Amendment and these are the things we
16 believe are appropriate in the zoning by-law amendment
17 or an amendment to the Minister's regulations, and
18 these are the things we think should be satisfied
19 before we go before the Consolidated Hearings Board.
20 We never did get those conditions.

21 So, after 1979 until now, we are still
22 not entirely sure what Burlington actually wants.

23 MR. LANCASTER: Do you happen to know
24 the make-up of that Solid Waste Management Committee?

25 THE WITNESS: As I remember, they were



1 all political people with their staff advisers.

2 MR. LANCASTER: All councillors?

3 THE WITNESS: I think so, sir.

4 MS. CRONK: I will have copies of that
5 extract from the interim report made.

6 There is one other matter which I hope
7 will be for the assistance of the Board and it does not
8 arise from Mr. Bacon's evidence yesterday, but you will
9 recall during the evidence of Mr. Stagl there was a
10 discussion concerning the compatibility checklist or
11 flipchart that was prepared and we have taken the
12 liberty of having that typed up and my friends have
13 been able to check it. This was Exhibit M-544. It is
14 just a typed version.

15 Q. Could you put up the north-south
16 cross-section you discussed yesterday?

17 You will recall that yesterday at the
18 end of the day, the question arose with respect to the
19 north part of the north-south cross-section and at my
20 request did you review all the information last evening
21 on the cross-section?

22 A. Yes, I did, Mr. Chairman, and I do
23 apologize for I guess the mistake of the draftsman,
24 although it was confusion rather than a mistake. The
25 lines, and I have rechecked, the section lines, they



1 are as accurate as I think they can be, and you will
2 remember that it showed the section line across the
3 site in a north-south direction. The confusion arose
4 over the names Bayview and Burlington. So, we have
5 changed the names so that they are easier to understand
6 and so we say limit of landfill, Site F and limit of
7 landfill, current site, which is the Region's site, and
8 Site F....

9 MR. LANCASTER: You are referring to the
10 current site as the Region's site?

11 THE WITNESS: That is correct. We have
12 taken the word Region, so that current site is the one
13 that is now under operation, so it is quite clear.

14 MR. LANCASTER: The current regional
15 site?

16 THE WITNESS: That is correct.

17 MR. LANCASTER: I thought that was the
18 Burlington site.

19 THE WITNESS: It is called the
20 Burlington site, but is run by the Region.

21 MR. LEDERER: One of the things that
22 came to regional government.

23 MR. LANCASTER: All right. That was not
24 clear to me.

25 MR. LEDERER: I apologize.



1 THE WITNESS: I'm sorry.

2 MS. CRONK: Q. Is there another change
3 to the south end you would like to point out to the
4 Board?

5 A. Yes, in adjusting this we moved
6 this line very slightly. That is in fact the line
7 there, to make it clear, where the fill in the drawing
8 that is before the Board actually finishes and it meets
9 the existing contours on the Region's site or on the
10 current site at this point and then slopes down in this
11 direction.

12 Q. With respect to the one that is
13 now called limit of landfill site F, was there a change
14 to that line as well?

15 A. That moved very slightly. It was
16 further in this direction, over where the actual
17 service road is and I have moved it back to where the
18 actual fill on the drawing before the Board is actually
19 starting.

20 Q. Have you personally checked those
21 lines now against the contour maps?

22 A. I have.

23 Q. Do you believe now that they are
24 an accurate representation of the limit of the landfill
25 as proposed for Site F and the limit of the landfill at



1 the current Burlington regional site?

2 A. Yes, I do.

3 Q. I should say that I have prepared
4 a revised smaller version, but could you outline what
5 you did at the north end?

6 A. The same thing. I took the labels
7 off and put limit of landfill Site F, which is where it
8 was, and the line has not changed, and the limit of
9 landfill, current site, which is up here and then limit
10 of property, current site, and that is the Region's
11 existing site.

12 Here is the power line which is this
13 line here. The land slopes down to this point here and
14 that, the north limit approximately of Site F, the
15 Azova lands, is just short of the north limit of the
16 fill line. So, the fill line is here and then you have
17 the 100 metre buffer zone up in here and I don't know
18 exactly where the property line is, but it is up here
19 in this region somewhere.

20 I think these relationships are
21 satisfactory and the reason why landfill Site F at this
22 point is shown here, considerably short of this line,
23 it would be somewhere down about here.

24 Q. You are pointing to the limit of
25 the NSP property?



1 A. A little bit north of the limit
2 of the NSP property because, as I explained, our
3 contours go slightly north of our property as drawn by
4 Northway-Gestalt and the section line was taken, and I
5 would have to refer to another drawing, but it was
6 taken up in this area and the Azova land is up in this
7 area and the contours change to the north of it and the
8 contours change to the north of it and the contours
9 change on the landfill proposal and that is why this
10 stops at this point and in fact it probably goes
11 something along like that and short of the region's
12 current site. It doesn't alter the purpose of this,
13 Mr. Chairman, because what I was trying to show is that
14 the valleys on the NSP site are considerably lower than
15 the top of the valleys and there will be a considerable
16 amount of fill before anybody sees it outside the
17 valleys and, secondly, the two sites, the existing or
18 current site and the Site F proposal for top of grade,
19 final grade, are pretty nearly identical and on the
20 east-west section you saw how they folded in, so the
21 site is a comfortable adjunct to the existing
22 landscape. That is what this section is proposing to
23 show.

24 Q. Finally with respect to the
25 titles, if I can call it that, as you have shown it,



1 you have added some language?

2 A. I put Region's final grade for
3 Site F and then for current site, so that everything is
4 consistent throughout, Site F, Site F, current site,
5 current site, and so I hope there is no confusion,
6 although there may be.

7 DR. KINGHAM: There is only one point
8 which I think needs to be made clear for this exhibit
9 for future reference, and it was in fact the genesis of
10 my question last night.

11 With respect to N-601 where you say
12 limit of landfill, Site F, and you have the pink line,
13 you mean as related to your Exhibit N-600 and in fact
14 the landfill Site F, as proposed, would extend
15 considerably north and the contours are similar to that
16 for the Burlington site?

17 THE WITNESS: That is correct.

18 DR. KINGHAM: Perhaps that should be
19 added on N-601?

20 THE WITNESS: I will do that at the
21 break.

22 MS. CRONK: We did our best to prepare a
23 revised reduced version and for the benefit of my
24 friends. You will recall the reduced version yesterday
25 was N-601 and I took the liberty of putting R beside it



1 and it shows what was originally there plus the changes
2 and I apologize, I'm afraid we don't have a photostat
3 machine.

4 MR. LANCASTER: We will mark this as N-
5 601R.

6 --- EXHIBIT NO.N-601R: Revised version of N-601.

7 MS. CRONK: For the benefit of those who
8 at some future time in argument will have to refer to
9 this, can I ask you to put up -- I was going to say
10 several months from now, but I thought that would be
11 too depressing this early in the morning -- but could
12 you put the east-west contour up please.

13 Could you take, if you would, a black
14 felt pen and as you did with the titles on the north-
15 south, please clarify what those titles are on the
16 east-west cross-section and which one relates to Site F
17 and which relates to the existing regional landfill and
18 just add the words, if you would please. Do you see at
19 the top...

20 A. Yes. That should say Site F and
21 this should say current site.

22 DR. KINGHAM: Is that....

23 MS. CRONK: Q. Can you compare it to
24 what you did on the north-south so we can get it right.

25 A. Okay.



1 Q. Isn't it the other way around?

2 A. I'm sorry. This is Site F.

3 DR. KINGHAM: Are those not both Site F,
4 the existing contour and the final contour on the lands
5 that are currently at Site F? So it's not really a
6 question about those titles any further, but whether
7 there should be a title for the orange line to the
8 left?

9 THE WITNESS: That's right. So it's
10 existing contour of NSP land, Site F, and Region's
11 final grade for Site F is here and there isn't a title
12 in here so there should be one up there. Would you
13 like me to put that on?

14 DR. KINGHAM: So then we understand.

15 MS. CRONK: Q. At the end of the day
16 you had outlined for the Board the nature of your
17 opinion concerning certain of the policies, the
18 planning policies that apply to Site F, and you had
19 discussed first the Parkway Belt West Plan and secondly
20 the Regional Official Plan and thirdly the City of
21 Burlington Official Plan and zoning by-law. Just to
22 put it back in context for all of us, you will recall
23 we had gone to your witness statement and that section
24 of your witness statement where you outline the issues
25 you had considered with respect to Site F. Are there



1 any other further planning policy documents you
2 consider relevant to Site F you wish to draw to the
3 attention of the Board?

4 A. Yes. The next one is the Pits and
5 Quarries Control Act because you will remember that
6 approximately 30 hectares of the NSP land has been
7 licensed since 1972 for a quarry under the Pits and
8 Quarries Control Act and there are two major points
9 that arise from this. The first one is referring to
10 tab L of the appendix to our report, which is N-587,
11 and Section 6(4) of the Act, which is on page 168 in
12 your numbered copy or paginated copy, sir, which says:

13 "The Minister may issue the licence
14 subject to such terms and conditions as
15 the Minister, in his discretion,
16 considers advisable."

17 So, it is "may", and it is not mandatory
18 that he issue conditions and in fact he didn't in
19 connection with the NSP licence.

20 Q. Have you reviewed that licence?

21 A. Yes, I have.

22 Q. That has previously been marked as
23 an exhibit, Mr. Chairman, but is it as well in your
24 materials for ease of reference?

25 A. Yes, N-306.



1 Q. Where do we find that in your
2 appendices?

3 A. That is at tab ...

4 Q. K?

5 A. Yes, K.

6 Q. I am sorry, I interrupted you.

7 A. The second point that is
8 important, Mr. Chairman, is Section 6(1) of the Act,
9 which says:

10 "The Minister shall refuse to issue a
11 licence to operate a pit or quarry where
12 the site plan does not comply with this
13 Act or the regulations or where, in his
14 opinion, the operation of the pit or
15 quarry would be against the interest of
16 the public taking into account...."

17 and then certain items, and I would note that is
18 mandatory, that he shall refuse to issue a licence, and
19 he has to look at the things that are set out in that
20 subsection, 6(1), and a number of these, as we will
21 see, are very similar to those that one has to take
22 into account in connection with an application under
23 the Environmental Protection Act and indeed under the
24 Environmental Assessment Act for a landfill site. The
25 first is:



1 "(a) the preservation of the character
2 of the environment;
3 (b) the availability of national
4 environment for the enjoyment of the
5 public;
6 (c) the need, if any, for restricting
7 excessively large total pit or quarry
8 output in the locality;
9 (d) the traffic density on local roads;
10 (e) any possible effect on the water
11 table or surface drainage pattern;
12 (f) the nature and location of other
13 land uses that could be affected by the
14 pit or quarry operation; and
15 (g) the character, location and size
16 of nearby communities."
17 So the Minister was required to look at
18 those matters and in fact did issue a licence for some
19 30 hectares, which you will remember is in the westerly
20 part of the site adjacent to the Region's current
21 landfill site, and did not issue any conditions, so he
22 must have been satisfied that those conditions had been
23 reviewed and were satisfactory.
24 Lastly there is the regulation under the
25 Pits and Quarries Control Act which is set out on page



1 174, Regulation 784 under the Pits and Quarries Control
2 Act and Section 2. The regulation requires:

3 "(1) An application for a licence to
4 open, establish or operate a pit or
5 quarry shall be in Form 1.

6 (2) An application for a permit to open,
7 establish or operate a wayside pit or
8 quarry shall be in Form 2 and shall be
9 accompanied by a description of the
10 proposed rehabilitation of the property
11 and intended use of the property after
12 the termination of operations, together
13 with a sketch map which shall include,
14 (a) the size, shape, location and
15 acreage of the property to be worked;
16 (b) the topography.....
17 (c) the location and use of all lands
18 and buildings....." et cetera.

19 And so the Act requires under that regulation that this
20 be put forward and presumably the Minister must have
21 been, designated as the director, must have been
22 satisfied that the proposed rehabilitation by NSP was
23 satisfactory, and that of course brings one down to the
24 analogy between a landfill site and a quarry because
25 both are considered interim uses, both require



1 rehabilitation and both have some specific ways of
2 ensuring that the rehabilitation is undertaken. There
3 is the fee that is collected and put into a fund by the
4 Ministry of National Resources in connection with a
5 quarry and, of course, with a public landfill there has
6 to be satisfactory evidence to ensure that the landfill
7 is ultimately rehabilitated. So the two are very
8 closely related in that sense, in that with one you
9 have to look at a certain number of things for a pit or
10 quarry and, two, you have to rehabilitate and the same
11 thing happens in greater detail for a landfill site, so
12 they are analogous, I think.

13 Following from the Pits and Quarries
14 Control Act, Mr. Chairman, there is of course the
15 mineral aggregate resources policy statement which in a
16 planning sense one must have regard to in considering
17 any land use in an area that has the potential for
18 quarrying, and that, I think, is your Exhibit M-305 and
19 there are a couple of points in connection with that.

20 Firstly, it clearly states under
21 implementation under G, point G or column G....

22 Q. What page are you on?

23 A. On page 4 of the policy statement
24 and it clearly states as we believe that it is the
25 policy of the government to encourage the concept of



1 extraction as an interim land use activity and towards
2 this end, the Ministry shall encourage operations of
3 extraction sites to make the most effective use of the
4 land resource, and that is not leave it open for longer
5 than is necessary to rehabilitate it as set out below.

6 Secondly, that land use, and this is
7 under principles at the top of page 3, the second
8 bullet down, that other land uses that may in specific
9 instances take precedence over it, aggregate
10 extraction, including wayside pits and quarries and
11 again under the fifth bullet it says it is an interim
12 land use activity and also that rehabilitation is
13 mandatory. It is clear that under this policy
14 statement it is appropriate for the use to be
15 considered interim, pits and quarries, and that other
16 land uses can take precedence where there is a real
17 public need and certainly landfill is one of those
18 under these particular circumstances.

19 That ties in, Mr. Chairman, with those
20 sections in the regional plan respecting landfill which
21 is set out in Section D.3.8 and we have mentioned on
22 page 25 of our report that the section is on page 70 of
23 the regional plan, and I won't go into it because it
24 effectively repeats rehabilitation is required in
25 respect of a quarry and of course for a landfill site.



1 So, as I said earlier, the point are
2 looked at, it is considered an interim use under all
3 documents that are relevant and so effectively we are
4 substituting one interim use for another and ensuring
5 that rehabilitation takes place. I think that all
6 these tie together neatly into a bundle.

7 DR.KINGHAM: I'm curious about one other
8 bit of interim use that comes out of what you are
9 telling us. You told us yesterday that it is used by
10 trail bikers and not entirely happily from the point of
11 view of some people. You also mentioned that people
12 occasionally will stroll down from Bayview Park into
13 the river valley nearby, and I am curious about that in
14 light of paragraph 18 on page 176 under tab L. You
15 also told us you had been to the site a few times and I
16 wonder if you can explain that to me?

17 THE WITNESS: Page 176?

18 DR. KINGHAM: Page 176. For those who
19 don't have page numbers, that is page 981 of the Pits
20 and Quarries Control Act.

21 THE WITNESS: I should read it.

22 "Every operator of a pit or quarry shall
23 erect and maintain a fence of heavy duty
24 farm fencing at least five feet in
25 height which shall follow the contours



1 of the surface of the ground on the
2 perimeter of the area to be used for the
3 pit or quarry operations, as indicated
4 in the site plan filed with the Minister
5 under subsection 4(2) or (3) of the
6 Act."

7 That is normally the case. There are
8 fences in some places, but there certainly aren't, that
9 I can remember at least, in this northerly part as you
10 come off the parking lot, and into there you can wander
11 into that valley. I didn't even think of that, but
12 there isn't a fence there that I can remember.

13 DR. KINGHAM: I was curious about it
14 from the point of your earlier comments about the
15 undesired or untended uses, other interim uses, I
16 guess, of the property.

17 THE WITNESS: I can't remember a fence
18 there. Certainly for the trail bikers notices have
19 been put up and the police have been called and so on
20 because it is so much of nuisance to NSP, and of course
21 there is some liability, but the neighbours don't like
22 the noise of these guys zooming all over the place.

23 DR. KINGHAM: All right.

24 MS. CRONK: Q. Are there any other
25 policies which you consider relevant to Site F which



1 you took into account in your planning analysis?

2 A. Yes.

3 Q. Perhaps you could take the Board
4 through those and outline how you consider them to be
5 relevant and what your opinions are?

6 A. The Food Land Guidelines, Mr.
7 Chairman. I should mention one last thing in relation
8 to Pits and Quarries. It is clear that the Ministry
9 of National Resources believes that landfill is a
10 satisfactory use here and I think that that is
11 expressed in their lawyer's letter which was produced
12 to you a week or so ago, or the statement, which is
13 MNR538. The Food Land Guidelines are certainly
14 applicable, or one must have regard to them and they
15 are Exhibit M-114. I think they are relevant to any
16 case where the land in fact potentially and the Canada
17 land inventory maps indicate that there is a potential
18 for agricultural use on Site F, but one must have
19 regard to a number of policies or a number of
20 statements in the Food Land Guidelines.

21 First of all, the Parkway Belt West Plan
22 does not specify that they are to be kept for ever as
23 an agricultural use. In fact, it contemplates urban
24 use on there by permitting industrial development of a
25 certain character in the special policy area in the



1 south end, and that is the only end or the only part of
2 the property that could conceivably, even small parts
3 of it, that could be used for agricultural purposes,
4 although I think that we have heard evidence that that
5 is highly unlikely. The regional plan clearly
6 contemplates urban uses there and the City of
7 Burlington's Official Plan, before it was superceded by
8 the Parkway Belt West Plan, clearly contemplated urban
9 uses there as it declared it a development zone or a
10 development designation, which clearly contemplates
11 urban use in the future.

12 So, I believe that the use of the land
13 for landfill would fulfil the Food Land Guidelines in a
14 positive way in that it is using urban or potentially
15 urban or anticipated urban land for the use, but the
16 Guidelines also require, under Section 3(13):

17 "Where high capability agricultural
18 lands have been identified, the use of
19 these lands for productive agricultural
20 purposes must be given priority in
21 evaluating alternative uses. If the
22 land is to be used for another purpose
23 the requirement must be justified."

24 So, in the sense that here is a parcel
25 of land which isn't highly productive agricultural



1 land, is intended for non-agricultural purposes and has
2 been for many years, then it is clear, to me at least,
3 that priorities should be given to using that land over
4 land which is in fact high quality agricultural land
5 and which has been used for agricultural purposes and
6 indeed is still being used, and there is no reason to
7 suspect that it shouldn't be used for agricultural
8 purposes.

9 Section 3(14)(3) on the same page in the
10 Food Land Guidelines is also clear where it says:

11 "Reasons for the choice of the location
12 based on the following considerations
13 must be given.

14 (1) a site which comprises the lowest
15 capability farmland of the potential
16 sites,"

17 and clearly Site F is of all the sites which the Region
18 has considered, and:

19 "No poor agricultural land which could
20 be used...."

21 It clearly fulfills those guidelines and the other ones
22 are in-filling between existing non-agricultural
23 development, logical extension, and that really doesn't
24 apply, although effectively Site F fulfills them
25 insofar as it can. On that basis, I also consider that



1 the Food Land Guidelines are followed.

2 Lastly 3(14)(4), which says:

3 "Consideration given to alternate
4 locations of lower capability
5 agricultural lands."

6 So clearly considering all the sites which the Region
7 has viewed, these are the lowest of the capability and
8 therefore ought to be chosen over any that have a
9 higher capability, because there aren't any others in
10 this category that are available. This is set out on
11 page 62 of our report of considerations.

12 Q. Are you familiar with the food
13 land preservation statement about which this Board has
14 heard something in the course of the evidence?

15 A. I am.

16 Q. Do the contents of that document
17 alter, expand or minimize in any way the comments you
18 have just made?

19 A. It doesn't, and rather than going
20 through them, because to an extent they are a
21 continuation and refinement and strengthening of the
22 Food Land Guidelines. They haven't yet been adopted,
23 but there are four sections, 3(1)(1) where it clearly
24 states:

25 "Where prime agricultural land has been



1 identified, the use of this land for
2 productive agricultural purposes be
3 given priority,"

4 and so clearly Site F, which isn't productive land,
5 should be given priority and sort of the obverse of
6 that coin.

7 3(1)(4) which says:

8 "Where non-agricultural development is
9 proposed for prime agricultural land,
10 such development shall only be permitted
11 if the need to use this land is
12 justified and such justification is
13 documented."

14 And I believe by putting forward Site F, one in fact
15 clearly demolishes any argument that that high quality
16 productive land should be used for non-agricultural
17 purposes and 3.2.1.2, which sets out the criteria and
18 3.2.1.3, which again is similar criteria to the Food
19 Land Guidelines, which says that you can only overcome
20 the Guideline if the special use has unique locational
21 requirements and is a logical extension of an existing
22 community or the existence of appropriate buffers or
23 boundaries from adjacent agricultural areas are all
24 satisfactory. The Food Land preservation policy, I
25 think, follows very closely upon the Food Land



1 Guidelines and it is clear that in that sense, since
2 there is an alternative, and assuming that it is safe,
3 Site F should be chosen over any other site which has
4 good, excellent agricultural potential.

5 The last one is the evaluation criteria
6 of the Ministry of Agriculture and Food, which is set
7 out under tab P.

8 Q. Of your appendices?

9 A. Of the appendices.

10 These are a series of factors which the
11 Ministry used to follow through on the Food Land
12 preservation. The last page of that, and one goes
13 through a whole series of things, the potential loss of
14 agricultural land, potential loss of existing
15 agriculture, facilities, impact, on-site/off-site farm
16 operations, impact on the agricultural communities,
17 many of the things we have heard about from the farmers
18 and residents in the area, compatibility of land uses,
19 possible spin-off effects, mitigation measures and
20 others. So in fact this is very similar in an
21 agricultural sense, I have always thought in using
22 these, to the MOE Guidelines in respect of sensitive
23 land uses, but here is the Ministry saying this is how
24 you should look at the agricultural community and the
25 last paragraph of that:



1 "The intent of attaining and evaluating
2 the above noted criteria is to locate a
3 site that has the least impact on
4 agriculture, in terms of loss of
5 potential agricultural land and
6 minimization of conflict with the
7 agricultural community."

8 So, Site F clearly fulfills that because
9 it has absolutely no effect on an agricultural
10 community because it isn't in one and it isn't good
11 agricultural land and not ever likely to be used for
12 agricultural purposes and has no impact in any way.
13 So, Site F fulfills all these criteria with an A plus
14 and clearly the reverse is true of any other site that
15 was investigated by the Region, including of course
16 Site D. I would note, parenthetically, that it is my
17 understanding that the Ministry of Agriculture supports
18 Site F and has said so in writing and the two comments
19 I have relied upon for that are set out under tabs Q
20 and R, pages 200 and 205 of the appendices.

21 Q. In a land use conformity sense, in
22 the context in which you have used that phrase, what is
23 your view as to the non-conformity or conformity of
24 regional landfilling at Site F with these type of
25 guidelines?



1 A. I believe that it conforms to the
2 policies.

3 Q. You mentioned a few moments ago
4 that you thought that the evaluation criteria
5 articulated by the Ministry of Agriculture were
6 analogous to the Guidelines in use by the Ministry of
7 the Environment. Did you consider the Guidelines in use
8 by the Ministry of the Environment with respect to Site
9 F?

10 A. I did.

11 Q. Are they in your opinion, relevant
12 to Site F?

13 A. Yes, I believe they are.

14 Q. In what way?

15 A. I believe they are relevant for
16 three basic reasons.

17 The first is that the site is in fact
18 located between the former Bayview site and the current
19 regional site and so it is clearly being sandwiched in
20 between the two and the guidelines have to apply.

21 The second point is a little more
22 difficult, and not perhaps to articulate it, but if a
23 land use or if landfilling was approved on Site F, the
24 land use surrounding it would have to be judged on the
25 basis of the same criteria, which are already used and



1 must be used in respect of the existing sites. You are
2 not actually changing the situation, because any
3 sensitive land uses, particularly residential of course
4 which surround the existing site will be judged on the
5 same criteria as if you had the site in there and so
6 you are not changing the situation in any deleterious
7 way.

8 Thirdly, the resource, the site plan
9 guidelines worked out with research and so on, I
10 believe, and we do use, and I use constantly, are
11 valuable tool and you don't have to follow absolutely
12 every one to the letter, but there has been a good deal
13 of discussion about the 500 foot line and I have never
14 regarded that as sacrosanct. One just looks and the
15 Ministry after all the plans have been approved, and
16 there have been hundreds of them across the province, I
17 am sure, but it thinks it is a good idea to look at
18 around 500 metres, 500 metres around the site to see
19 what goes on there, but to exclude something that is
20 510 metres I have never thought was relevant, but just
21 to look at that general area and sometimes beyond it if
22 there are certain circumstances that so warrant.

23 I believe the guidelines are important
24 to look at and should be followed.

25 If we may turn to the guidelines, which



1 are tabs M and N, which is concerned with land use
2 compatibility....

3 Q. You are at tab M?

4 A. Yes. Page 184. It states in the
5 Statement of Principles:

6 "This policy identifies the direct
7 interest of the Ministry of the
8 Environment in recommending separation
9 distances and other control measures on
10 land use planning proposals to prevent
11 future incompatibilities between land
12 uses. The policy statement sets the
13 context for all existing and new
14 policies related to land use
15 compatibility."

16 And then it goes through the steps that
17 one should follow, and I discussed at the beginning
18 talking about my terminology and how I felt the
19 Ministry's land use compatibility, which in fact talks
20 about what the Ministry considers as incompatible, it
21 was a good starting place for anyone to start from, and
22 then one gets down to the scope....

23 Q. Can I interrupt you and understand
24 what you are saying about that? You have told the
25 Board what you as a planner regard land use



1 compatibility to be and the Board is aware, and it is
2 disclosed by the guidelines, that there is a definition
3 of land use compatibility in these guidelines?

4 A. Yes.

5 Q. What is your view as a planner, or
6 how do you use, if at all, that definition in assessing
7 the suitability of a land proposal?

8 A. I use that definition clearly and
9 all I was saying was not denigrating from it in any
10 way, but I think that this is an excellent definition
11 of what is actually incompatible and that is really
12 what it says, a recognised factor and principle in land
13 use planning for land uses which are known or expected
14 to cause environmental problems when in proximity are
15 deemed incompatible. So, the reverse is what I have in
16 practice over thirty years, have considered to be
17 compatible. I think they are right when they say a
18 recognised factor in good land use planning, because
19 it is. I am saying that I gave a definition of
20 compatibility and this effectively says what is
21 compatible but in reverse, because they are talking
22 about incompatibility.

23 Q. Thank you.

24 A. The scope of the objective of the
25 policy on page 186 is pretty clear, it is:



1 ".... to minimize the exposure of
2 humans, including existing and future
3 residents to the adverse environmental
4 effects of certain incompatible land
5 uses."

6 Whether one likes it or not, landfill is
7 certainly considered by most people as an incompatible
8 use with almost everything except perhaps very heavy
9 industry. The scope of the policy in Section 2 involves
10 all land uses that are conflicting with residential use
11 or other sensitive uses including certain industrial
12 uses, transportation facilities, utilities,
13 agricultural operations, commercial uses and intensive
14 recreational uses.

15 Well, all those factors have of course
16 been looked at to see whether they apply and there are
17 no industrial uses immediately adjacent and there are
18 no transportation facilities that would be affected as
19 we have heard and seen in the Giffels Report on
20 Transportation and our own studies. There is plenty
21 of capacity on the North Service Road to accept what is
22 there now and some increase by 2000 odd. The
23 utilities are there to look after the site. There are
24 no agricultural operations. There are no commercial
25 uses immediately adjacent to the site, or within



1 viewing distance or within any distance that might
2 affect them if the site is used for landfill, and there
3 are no intensive recreational uses. The only
4 recreational use that is outdoors effectively of the
5 two, the model airplane club and the riding academy, or
6 the equestrian facility, I don't believe would be
7 unduly affected, and certainly a model airplane club
8 isn't and I don't believe from what we have heard and
9 from my knowledge of riding in any event, that they
10 would be deleteriously affected to an extent that even
11 mitigation measures would be required.

12 Q. How far away from Site F are the
13 Cumis and Tridon facilities?

14 A. I have never measured them, but
15 they must be at least 500 metres to the west, Tridon,
16 and, as I explained, they are sort of in the folds of
17 the land, as the land goes down. I have not been able
18 to see on both winter and summer visits to them the
19 regional site, and I certainly don't think you could
20 see the NSP site, because this of course rises up as a
21 height of land in between the two.

22 Q. What about the possible impact in
23 a sensitive land use context, Mr. Bacon, for users of
24 Bayview Park. Have you considered that?

25 A. Well, I don't think people -- from



1 my knowledge of the park, walking onto the NSP site,
2 while the northerly cells were being filled, the
3 manipulation of the land form and the piling and stock-
4 piling and so on, I don't think people are likely to
5 walk in there, but it is a very transient use in that
6 sense in that they will, by the time that Site F is
7 being used, this, and it already looks jolly good in
8 parts where it has been graded and finished and seeded
9 and so on, but they will be able to go around onto the
10 existing regional site and there is so much land in
11 that area upon which people can walk that the loss of a
12 cell, if done one at a time as the site is developed or
13 used for landfill, the use is infinitesimal in the
14 total scheme of things, because with a lot of these
15 properties there are no fences and you can sort of
16 wander through the landscape very easily. I really
17 don't think that that will affect people walking, but
18 the equestrian facilities we have discussed a great
19 deal, and I don't think there is a serious effect on
20 those for the very short time that those cells on the
21 north side would be used. So, I just don't think there
22 is a serious effect when one thinks of the importance
23 of the facility to the Region, to the public, and the
24 use of that site for recreation purposes. I have never
25 been there, apart from one weekend when I saw the



1 horses there, when there were more than three or four
2 people on the site. It is not intensive recreation use
3 in any way, the way a local field is used for ball by
4 kids and moms and dads strolling with prams and things,
5 it is a different sort of facility, and I don't think
6 it comes under the Ministry's category of intensive
7 recreational use under any circumstances.

8 Q. Thank you, sir. Did you consider
9 as well specifically -- was there anything else on
10 this?

11 A. No, I think it meets the policy
12 statement of the Ministry of the Environment very
13 comfortably, and all the things one would look at have
14 been looked at and it is clear to me that it meets
15 those policies.

16 Q. One of the categories of items
17 identified in these guidelines, Mr. Bacon, you have
18 spoken about, the sensitive use provisions in Section
19 2.1, and Section 2.2 deals with environment effects and
20 sets out a number of circumstances that are dealt with
21 under the guideline. Did you as part of your planning
22 analysis of the NSP lands, specifically look at
23 potential impacts from various -- from the landfill
24 operation in the area of Site F? Did you look for
25 example at transportation, noise, gas, odour, the kind



1 of things identified in the guidelines?

2 A. Yes, Mr. Chairman, I did.

3 Q. Could you outline perhaps for the
4 Board what you looked at and then explain to the Board
5 what your considerations were?

6 A. Yes, Mr. Chairman. I looked at
7 noise, and not so much vibration, but noise, gas,
8 odours, and what I call dust rather than particulates,
9 although particulates is obviously a much more
10 scientific investigation, and other contaminants. I am
11 not an expert in leachate control and so on and clearly
12 that is an important contaminant, but I read the
13 Region's reports and I have been on the site and have
14 paid particular attention to the matter of odour and
15 dust and noise and I would like to come to those
16 sections later, but I have considered all those
17 matters, or do you wish me to go into them now?

18 Q. Perhaps I could ask you to turn to
19 Section 5 of your report at page 44, and I don't
20 propose to go through the section in detail, but the
21 first part appears to be related to the policy
22 provisions and the conformity issue under the Parkway
23 Belt West Plan and the regional plan and so on and over
24 at page 50 and following there is a rather lengthy
25 discussion of various potential impacts, and the first



1 is transportation.

2 Could you tell me please what
3 specifically did you look at with respect to
4 transportation and the potential for impact on the
5 transportation system in the vicinity of Site F is
6 landfilling is approved?

7 A. Yes, Mr. Chairman. We did carry
8 out as I said yesterday, a transportation study prior
9 to submission of the application for approval under the
10 Environmental Protection Act and in Exhibit 590 we set
11 out in Section 3, page B-11 the details.

12 Q. Is that the design report?

13 A. The design report. We set out the
14 whole traffic assessment and our conclusion was one
15 that the existing roads -- perhaps I had better read
16 those more carefully. We concluded on the matter of
17 volumes, that there is plenty of this capacity on the
18 streets and since the volumes are spread out over at
19 least ten hours it can be seen that even allowing for
20 peaks, the number per hour is small in comparison with
21 the capacity of the road system and specifically the
22 North Service Road. We, of course, or I of course
23 read the Giffels reports, H-31 and H-33, and other
24 parts in other exhibits. We noted that landfill
25 operations have been carried out in the area for many



1 years without transportation problems and we make that
2 statement on the basis of having checked with the
3 regional works people and also the police department to
4 find out if there were large scale accident records on
5 the North Service Road. We noted also that there were
6 a number of improvements which had been proposed and
7 this is set out in the first paragraph on page 51 to
8 the Queen Elizabeth Way/Highway 404 system in the area
9 and some construction has taken place to the east and
10 it is expected in late 1988 or early '89 work will
11 begin on the new interchange at Brant Street and the
12 Queen Elizabeth Way.

13 Q. Where is that?

14 A. That is at the top...

15 Q. I am sorry, could you point out
16 where the intersection is?

17 A. This one here. That is the Queen
18 Elizabeth and the 403 going through here and it is
19 proposed to provide an appropriate interchange so one
20 doesn't have to go off on Plains Road, but the
21 interchange will be in the Brant Street area, which
22 will give a much better connection here. You now have
23 to come off onto Plains Road. When we wrote our
24 transportation report, that was not expected until the
25 mid-1990s, but my personal enquiries of the Ministry



1 within the last -- at the beginning of the year, to see
2 whether that had been updated, because we noted that
3 some work had already taken place in terms of land
4 removal across the front of the Stelco site, and you
5 can just see the edge of a bit of work there on the
6 aerial photograph, and they said yes it was expected
7 that tenders would be let at the end of 1988 and work
8 started during the winter.

9 Q. Just on this issue of your
10 consideration of transportation impact or the potential
11 for it, are you a qualified transportation expert?

12 A. No, I am not, but I have worked
13 with the people in our transportation department for
14 the last twenty-seven years and before that with
15 engineers, and I think it is an important component of
16 planning investigations and I have always taken
17 seriously and tried to understand as much as I can of
18 the way in which transportation studies are carried
19 out. In this case I actually was out on the site with
20 our transportation engineers when we decided where to
21 take counts and what information to collect and I
22 worked with them through the investigations which were
23 in 19-- late 1979 and 1980 prior to the submission of
24 the design report, and it was completed in April of
25 1982.



1 Q. Based on the information available
2 to you as you have described it, were you able to form
3 an opinion in a planning context as to the potential
4 for adverse transportation impact at Site F?

5 A. Yes. We found essentially no
6 adverse impacts and we stated these on page 51 in terms
7 of the positive features related to the NSP landfill
8 from a traffic safety perspective and that included the
9 following:

10 One, the entrance to the site has
11 excellent visibility because the North Service Road is
12 relatively level and is essentially horizontal, both to
13 the east and west.

14 Secondly, there is a signalized three-
15 way intersection at the southeast corner of the site at
16 the North Service Road and King Road adjacent to the
17 site. I am sure that's a four-way intersection.

18 Third, the majority of access to the
19 site is via provincial highways, which are being
20 improved in the area, and I mention the Brant Street
21 interchange.

22 No. 4, access to the NSP land is
23 available entirely from arterial roads, rather than
24 collector or local roads, with the sole exception of
25 the North Service Road which is used now by trucks as



1 well as private passenger vehicles and small trucks.

2 Q. What is the North Service Road?

3 A. The North Service Road is the
4 north service road of 403 Highway and it runs all the
5 way along.

6 Q. I didn't mean where it was but what
7 type of road is it, because you seem to be suggesting
8 there is access available entirely from arterial roads
9 with the exception of the North Service Road and what
10 is it?

11 A. Well, a service road is normally
12 considered part of the arterial road system and it
13 carries vehicles and it depends upon how it is
14 designed, and the designs have changed over the years
15 from local service roads which we use entirely for
16 frontage purposes, and still on some arterial roads
17 there are service road of that nature that in fact are
18 parallel to an arterial road to keep access off the
19 arterial road. In this case it is a connection between
20 inter-changes, because the interchanges are not that
21 closely spaced, and it is used by all traffic and
22 frontage onto such a type of service road is normally
23 discouraged and in fact has been very small on this
24 part of the service road at least between east of Brant
25 Street and way west of Waterdown Road. There are



1 relatively few entrances and that is the normal policy
2 of the Ministry, to keep the entrances down to a
3 minimum where it is this type of service road. The
4 extreme of this type of service road, I guess, is the
5 service roads on the 404, 401 and so on, where they are
6 very high speed service roads and they connect directly
7 into the ramps on the interchanges. This is one step
8 down from that kind of collector.

9 Q. I interrupted you.

10 A. Neither the Region's consultants,
11 Giffels Associates Limited, nor ourselves identified
12 any safety concerns at the site entrance and, according
13 to the transportation experts, haulage truck routing to
14 the existing adjacent regional landfill site can be
15 maintained, thus creating the least amount of change to
16 existing conditions, and in this regard I looked at
17 Giffels' projections, the waste quantities projections,
18 the number of trucks and the increase in traffic that
19 there would be through the twenty-year period on such
20 facilities as Brant Street north of the 403 and routes
21 in the general vicinity which might lead to an
22 additional impact over the existing traffic on the
23 roads in the immediate vicinity that would conceivably
24 change if you shifted from this site to another site,
25 because there will be collection vehicles on every road



1 anyway now which has collection, but the main haulage
2 routes. It appeared to me that I could comfortably
3 agree with both Giffels and our own people in saying
4 that the existing haul routes could be maintained and
5 effectively there would be no increase in damage and
6 there wasn't a problem anyway at the present time.

7 Q. Mr. Bacon, in this section of the
8 report, the next topic dealt with is hydrogeology and
9 hydrology and I am obliged to ask you if you are a
10 qualified hydrogeologist?

11 A. No, I am not.

12 Q. What did you do with respect to
13 hydrogeology in terms of your planning assessment of
14 Site F? What work did you undertake?

15 A. When we first started work in 1979
16 we asked Morrison Beatty to investigate the suitability
17 of the site for landfill purposes and on page 53 I
18 stated that:

19 "Morrison Beatty Limited in their hydro-
20 geology investigations of the NSP land,
21 concluded that the hydrogeological
22 conditions at the NSP site were 'ideal
23 for a landfill operation.' They also
24 indicated in their Phase II report:

25 'In summary, we concluded that the



1 NSP property is hydrogeologically
2 suitable for the proposed landfill.
3 There will be no adverse impacts on
4 water resources in the vicinity of
5 site provided the methods of
6 infiltration control and leachate
7 control and treatment outlined in
8 this report are carried out."

9 Then on the next page we list a whole
10 series of factors.

11 Q. I am sorry, but how are
12 hydrogeology issues relevant to a planning analysis if
13 at all in your view?

14 A. Mr. Chairman, in almost - I
15 wouldn't say in every case, but in every case other
16 than single family detached houses, it is important to
17 know whether, (a), geologically you can put a building
18 on the site satisfactorily and, (b), particularly in
19 large scale buildings, and we deal with a lot of those,
20 if you can in fact burrow down into the earth to put in
21 parking structures and so on and so you must know
22 something about hydrogeology. Over the years I have
23 had to understand what they are talking about and have
24 read many, many reports of them from hydrogeological
25 situations on the edge of the Don Valley, where at one



1 point we were proposing apartments, and in fact it can
2 change the complete design of our proposal because of
3 the hydrogeological conditions, that sort of matter,
4 and in London I had the same problem and in Ottawa we
5 had earthquake faults through the area, so one must
6 have regard to these in almost every investigation,
7 even if it is a very superficial one, one checks with
8 MNR or Energy, Mines and Resources in Ottawa and gets
9 their maps and looks at it and finds there is likely to
10 be a problem in the preliminary investigations and then
11 we don't do any more until soil borings are actually
12 taken for roads or buildings.

13 Q. In this case you have told the
14 Board that Morrison Beatty were retained and you
15 reviewed their reports, but did you review any other
16 documents with respect to hydrogeology?

17 A. I read a number of the reports
18 completed by the Region's consultants, and particularly
19 in the comparative report, which is H-14, and they all,
20 as far as I in my judgment have said that Site F was
21 preferred over all other sites.

22 I am not, as I said, a hydrogeologist
23 and there may be nuances I didn't understand, but the
24 clear word was that this was the preferred site and I
25 think that that is terribly important, particularly



1 because of this, Mr. Chairman, and it is important in a
2 different way other instances, that is from buildings
3 and so on, but I have maintained and do maintain, and I
4 am sure will main that if a site isn't safe it is not
5 worth looking at in any other aspects and so throughout
6 all of our work this has been paramount, for the waste
7 management corporation and so on. So, unless I am
8 satisfied that our people, and subsequently in this
9 case consultants for the region have said the site is
10 safe, then that would over-ride any planning
11 considerations, however super it might be under any
12 other circumstances. It must be safe.

13 My understanding of all of those reports
14 from Morrison Beatty and Region's consultants is that
15 it is safe and so public safety, which is paramount in
16 my view, has been satisfied.

17 Q. One of the other issues discussed
18 in Chapter 5 of the report are biophysical features
19 with respect to Site F, and again in a planning context
20 what issues or factors did you take into account with
21 respect to the potential for biophysical impact?

22 A. Mr. Chairman, you will remember
23 that the site size for the landfill component of the
24 NSP site, now Site F, together with Azova, has changed
25 on a number of occasions. When we first started out we



1 made our applications, and one remembers the Parkway
2 Belt West Regulations on the basis of one size, and we
3 brought the size down as a result of a detailed
4 environmental appraisal which Proctor & Redfern
5 undertook with their own staff, WB-107. I was out on
6 the site on two occasions at least with our people
7 doing these investigations and we discovered a number
8 of what were said to be rare plants, and we reduced the
9 size, purely because of that. That was a traumatic
10 experience because of course it meant a colossal
11 difference in the yield from that site. The start-up
12 costs are the same, the operating equipment is
13 virtually the same, but you don't get the same life out
14 of the site by reducing its size because there are
15 economies of scale. That decision was a very big one
16 and it was not taken lightly by us in our
17 recommendations to our client or by our client.

18 Q. Did you read the biophysical
19 report prepared in this case by the Region's
20 consultant?

21 A. I did. I considered those
22 carefully. I should note, Mr. Chairman, in this regard
23 that I think that the other factors concerning human
24 beings, that is the impact of anything on flora and
25 fauna, unless there is some earth-shatteringly, world-



1 endangered danger problem, I don't consider them
2 anything like as important as the impacts there may be
3 on people. I include, of course -- nevertheless of
4 course they have got to be taken into account as they
5 are important, the preservation of our natural
6 heritage, it is important, and I have spent a lot of my
7 life fighting causes in this regard in the Conservation
8 Council.

9 Q. In this case from a planning point
10 of view, and based on the information available to you,
11 did you draw any conclusions with respect to the
12 potential impact of the site?

13 A. Yes, we believe that with the
14 shape and size of the fill proposed, there would be --
15 now proposed -- there would be some loss of plants
16 which are significant, but that the majority of the
17 oak, hickory, or in fact all of the oak, hickory forest
18 would be retained, and that is an important element in
19 the landscape, that there would be no rare or
20 regionally significant mammals, birds, fish, amphibians
21 and so on affected at all. The impact on the rest of
22 the plant community is minimal and these views which we
23 had and which we have continued to follow through of
24 course are, I think, echoed by the biophysical
25 consultants for the Region.



1 I think that when one takes these into
2 account in conjunction and juxtaposed to the ones on
3 human beings, that one, and I don't like using weights
4 because I don't really think you can weight things
5 accurately in a scientific sense, but they must be
6 lower than the other considerations, because the
7 paramount is safety and hydrogeological and so on and
8 too all the other factors we have looked at. So, my
9 judgment is, Mr. Chairman, that while the biophysical
10 factors have some impact, they are certainly not enough
11 to pre-empt the use of Site F, bearing in mind all its
12 other advantages and the fact that the major features
13 on the site are in fact going to be happily preserved.

14 MS. CRONK: I wonder if now would be an
15 appropriate time to take our break?

16 MR. LANCASTER: Yes, it would be.
17 Fifteen minutes.

18 MS. CRONK: Thank you, sir.

19 --- Recess

20 MR. LANCASTER: Please be seated.

21 MS. CRONK: Q. The next subject matter
22 dealt with under Chapter 5 of your report pertains to
23 dust -- noise, dust, odour and visual impact. We will
24 come to dust in a moment. I apologize.

25 With respect to noise, dust and odour,



1 Mr. Bacon, can you tell the Board how you went about
2 considering these issues and in a very summary way if
3 you could explain from a planning point of view what
4 you thought their significance was and what your
5 conclusions were with respect to their significance for
6 Site F, noise, dust and odour?

7 A. First of all noise. We did carry
8 out a noise study or some sound studies, noise being
9 when it is obnoxious. We did carry out noise
10 investigations and I was there on site when our noise
11 technologist was undertaking the work. I read the work
12 by Senes Consultants, by the Region -- I am sorry, by
13 the Region's consultants, and we concluded there was no
14 adverse or would be no adverse noise impact, and I was
15 out on the site and paid some attention to the noise
16 that was emanating from the Region's site and our
17 conclusion was that there would be essentially no
18 effect on anybody and there would be no effect on any
19 residential community and imperceptible effects on any
20 nearby residences.

21 Q. You said that Proctor & Redfern
22 had undertaken sound studies and is that material
23 before the Board?

24 A. It is, it is in our design report,
25 one of the appendices to the design report.



1 Q. Are you an expert on noise impact
2 or sound studies?

3 A. I am not.

4 Q. Did you rely in that sense on the
5 work that was done by your firm and the Region's
6 consultants?

7 A. I did. I have a thorough under-
8 standing, having been involved in a consideration of
9 noise since 1956, when three of us, the Director of
10 Planning for the Province, the Director of Planning for
11 Etobicoke and myself as the Director of Planning for
12 Mississauga were appointed to a committee by the
13 Minister to investigate noise at Malton airport and
14 from that time on I have taken an interest in it and
15 have read about noise studies and have been involved in
16 a number of cases where noise was extremely important,
17 Greyhound Bus terminals and so on.

18 Q. Had the results of the studies
19 conducted by the experts which you have read indicated
20 potential for significant noise impact at Site F, would
21 that have been a factor in a planning sense which you
22 would have regarded as significant?

23 A. I would have regarded it but they
24 all said there would be significant impact.

25 Q. With respect to dust and odour,



1 similarly what work or reviews did you undertake?

2 A. Proctor & Redfern per se did no
3 scientific studies of dust. I made my own observations
4 when visiting the NSP site, dust which may come from
5 the regional site onto trees, bushes, shrubs and the
6 ground and I read the Senes air quality analysis
7 reports which are exhibits before the Board and the
8 conclusion was from those, as I understand it and my
9 conclusion was, that there would be acceptable air
10 quality outside the site in terms of the Ministry's
11 guidelines and there would be no impacts on existing
12 residences in the area and that the odour from fresh
13 garbage predicted would be undetectable outside the
14 site.

15 Q. Were those findings consistent or
16 inconsistent with your own observations on the site?

17 A. They were entirely consistent with
18 my observations.

19 Q. What did you note with regard to
20 this issue during your site visit?

21 A. Well, (a), there was dust perhaps
22 10 to 20 metres on our site from grading and work by
23 the large scale machinery on the Region's site whenever
24 the wind was blowing toward the NSP site, that it
25 wasn't detectable on trees or bushes and farther than



1 that, that there was no perceptible odour on the NSP
2 site on any occasion when I went there, nor on the
3 Bayview Park when I went there.

4 Q. Again, Mr. Bacon, had your own
5 personal observations led you to conclude that there
6 would be significant dust or odour results from
7 landfilling at Site F, or had the Region's consultants
8 so indicated, would that have been a consideration you
9 would have regarded as material in carrying out your
10 planning analysis?

11 A. It would have been extremely
12 material. I might say that I accept that it is
13 inevitable that occasionally there will be some
14 garbage, plastic and paper and so on which will blow
15 off a site, but the Region in its management of the
16 site, was very good and I never found any serious
17 amounts although there were occasionally bits that may
18 have blown off, bits of plastic and so on which may
19 have blown off the Region's site onto the NSP property,
20 but it is certainly an important consideration in my
21 view, but in this case there would be no property that
22 would be deleteriously affected anyway.

23 Q. With respect to visual impact, and
24 that discussion begins as well, as I read it, at about
25 page 71 of your report, would you outline for the Board



1 please what work or investigations you undertook in an
2 effort to assess the potential for visual impact at
3 Site F in the event of landfilling at that site?

4 A. Yes, Mr. Chairman. Throughout the
5 years since 1979 in my visits to the site, and as
6 occasioned by comments made from time to time by
7 ratepayer groups and so on and by individuals who have
8 attended public meetings, I have rechecked my
9 observations taken from the immediately-surrounding
10 area, from the Tridon and Cumis on the North Service
11 Road, the residential area to the south of the railway,
12 the industrial area on the east side of King Road south
13 of 403 Highway, the Tyandaga community over on the
14 west, or to the west of Kern's Road, which is to the
15 east of the site, and from the NSP property, which is
16 to the west of the Tyandaga community and particularly
17 from houses to the east and off Waterdown Road, down
18 Old Waterdown Road. I am indicating on the aerial
19 photograph the houses to the west of that, and Rennick
20 Road is a northerly one, and the houses that come off
21 Ridge Road to the northwest of the site and to the
22 houses, the yards, the front yards of the houses or the
23 road that goes in front of the houses immediately to
24 the north of the site and east and west of King Road.

25 Q. Have you walked the Bruce Trail



1 and the escarpment in the area to the north of Site F?

2 A. I have.

3 Q. Were you able on the occasions
4 when you did that, to see the regional landfill site,
5 the current one?

6 A. As I explained when I was viewing
7 the section, it is possible in some places in winter to
8 see the Region's site and therefore one must presume,
9 since I have shown on the contours that it likely will
10 be very close to those of the Region's existing site,
11 that one could see it occasionally. However, from most
12 of the trail you cannot see the site because of the
13 angle at the top of the escarpment and I don't think
14 there would be any visual impact that one would perhaps
15 notice. I have never actually seen it from the Bruce
16 Trail itself but maybe I have missed it, the sights are
17 so infrequent. You have to go off the trail over
18 towards the edge of the escarpment and specifically
19 look to see it.

20 Q. Still at the north, the Board has
21 heard evidence concerning the residences to the north
22 on King Road. Did you make any effort in your site
23 inspections to determine what visual impact there might
24 be on those residences in the event of landfilling at
25 Site F?



1 A. I did. As I explained, in between
2 these houses and Site F there is no dense bush all the
3 way through. There are open fields, but there are a
4 considerable number of trees in the area to the north
5 of the site. There is also the power line, which goes
6 right across in front of their view. So the views are
7 what I would call filtered views from these houses down
8 to the site. If you are sitting out, and I have only
9 stood in the yard and have not sat on the balcony
10 outside the front of the house on the west side, but
11 the two houses here are fairly old houses.

12 Q. You are pointing to the two....

13 A. On the east side of King Road and
14 closest to the site. While they would certainly see the
15 site and part of its operation when it was at the north
16 end, I don't believe they could even see operations in
17 the centre of the site and they wouldn't see anything
18 going on until the landfill had come above the valleys
19 on the NSP property. They would certainly see
20 operations going on, but it would not obscure their
21 total view because their major view is out over to the
22 bay and the shoreline and it certainly would not
23 obstruct that in any way.

24 Q. Did you visit each of those
25 properties?



1 A. I did on a number of occasions,
2 the latest being two days ago.

3 Q. On the east side of the site, Mr.
4 Bacon, with reference to the residential -- I keep
5 mispronouncing this word in my own mind....

6 A. Tyandaga.

7 Q. Thank you. To the east?

8 A. Yes.

9 Q. Based on your own observations,
10 were you able to form any conclusions as to what impact
11 there might be on the viewpoints from that residential
12 area in the event of landfilling at Site F?

13 A. I believe it to be nil, because I
14 don't think you can see, and I have never been able to
15 see and I have been out there specifically to look, but
16 from any of the residences which are closest, nor from
17 the land owned by NSP in the area, nor from the houses
18 in this northerly area, because of you see the land
19 form and also because of the dense bush there is going
20 through here. Of course the hydro line is the
21 predominant feature in the area, because they are very
22 big structures and lines.

23 Q. What about to the south? The Board
24 has heard and you have discussed the residences located
25 to the south of the CNR tracks. Let's deal first with



1 the residences. Have you personally gone to that
2 community and made any effort to assess what visual
3 impact there might be in the event of landfilling at
4 Site F?

5 A. I have been in the backyards of
6 some of the houses there illegally, because I didn't
7 ask permission, but I walked up their driveways and
8 looked over, as I explained, and the rail line is
9 elevated through most of this area and the view in my
10 experience anyway from the houses I did, the spot
11 houses where I did go into their yards, it is totally
12 obscured by relatively continuous bush all the way
13 along in this area and from the height of the rail
14 line, which is immediately behind their backyards. I
15 was never able to see the regional site from there.

16 Q. What about the apartment
17 buildings, did you make any effort to assess the
18 impact?

19 A. I did. The apartment buildings are
20 on Francis Road, which I can't spot on the aerial
21 photograph. It is over on Plains Road, south of Plains
22 Road. There are three buildings which conceivably can
23 see the site, and the one immediately adjacent to and
24 west of Francis Road is oriented in a south-north
25 directly and all the balconies face in an east-west



1 direction. I guess one could see the site around the
2 edge of the third building, the building which faces
3 onto Plains Road itself if you leaned over and looked
4 out specifically to look up towards the NSP site, but
5 the views are east-west, all the balconies face east-
6 west and there are no balconies on the north end, and I
7 believe the only windows are from the stairs which go
8 up the building at the end.

9 The building to the west of that, on the
10 south side of Plains Road, is more of a tower than a
11 slab building and the balconies are on the corner for
12 all except some of the apartments, two I think on each
13 floor. I have been inside the building. Their view is
14 in an east-west direction and although they also look
15 north and they would certainly see the site, there is
16 no question about that, but I don't believe it is a
17 visual obstruction that I would consider to be a
18 serious one. One can see all sorts of things and in
19 the other direction there are balconies where you can
20 see down towards Stelco and Dofasco and so on and the
21 activity going on and I don't believe it will
22 deleteriously affect them by having a landfill site
23 there.

24 Q. What about the third building?

25 A. The third building is behind those



1 two and its views are past those two buildings. I
2 don't believe there will be any effect on that,
3 although unquestionably they could look out and see the
4 site, if they sort of bent over the balcony and looked
5 up, but I just don't think it would have any
6 deleterious effect upon them.

7 Q. What about uses to the west of
8 Site F?

9 A. To the west of Site F as I
10 explained, the attractive views in this area for
11 anybody who went out and sat out for lunch would be in
12 front, in this lovely orchard in front of Cumis or on
13 the landscaped grounds in front of Tridon. Tridon's
14 operations are around the side and there is a steep
15 bank behind the building and behind this yard and I am
16 sure it was done deliberately so the yard would be
17 where they could store materials for recycling and so
18 on. It was done deliberately putting it in that way
19 so you would have to climb that bank and then
20 immediately behind that you have got bush. I have been
21 unable to see the Region's site, which is a measure of
22 seeing this, and even if you could see the Region's
23 site, which I was not able to, one wouldn't see NSP or
24 Site F because it would be hidden by the Region's site
25 and the same with Cumis. Anybody who was going to sit



1 out and enjoy the view will be looking south over the
2 harbour and so on rather than going out around the back
3 because again there is bush at the back and there is
4 the hydro power line which goes through in this
5 direction immediately behind them and then the views --
6 I won't say they are totally obscured and I may have
7 missed it, but they are substantially obscured and that
8 is not where anyone would sit, in my view, and I have
9 never seen anybody out there. The parking lots for
10 Cumis are as shown on the aerial photograph, they are
11 all on the east side of the building and just to the
12 north of it, and there is a sort of multi-level parking
13 area, and it's not a structure but they climb up the
14 hill with ramps in between and I don't think there will
15 be any effect on those industrial buildings.

16 As I have said, from filtered views --
17 there are no views from any of the houses on Waterdown
18 Road and you can't possibly see the site because of the
19 land forms and the trees. Some view would be had by
20 these people of the regional site, and you can see it,
21 although one has to sort of orient and deliberately
22 look in winter through the trees here on the Falcon
23 Creek. It is possible to see the northerly part and
24 there is some sort of structure on it at the present
25 time, a shed or something, and one can see, but I don't



1 think it would substantially affect them and it
2 wouldn't affect the operations -- they would not have a
3 view through onto Site F and certainly not a full view
4 because the Region's current site is in between.

5 The houses up here, the westerly one is
6 down in a fold in the ground, and I wasn't able to see
7 from its yard through to the Region's site, let alone
8 Site F, which again would be shielded because the
9 Region's existing operation is here. Atkin's, the end
10 one on the road -- I am sorry, that's not Atkin's
11 there, but they would certainly be able to see it but
12 with some difficulty because there is a pretty dense
13 bush in between and an open area and then a dense bush
14 and then the fold of the land goes down and up again
15 and I don't think it would have any effect on them
16 because again their views are magnificent out towards
17 the bay. I suppose for some time it would be seen if
18 they looked easterly over the bay and towards the
19 eastern part of Lake Ontario but I don't think it would
20 have a deleterious effect, because it is not right in
21 their front yard, it's a considerable distance away.

22 Q. When you were out on these site
23 inspections, did you perform or carry out any actual
24 field measurements, sight line measurements or
25 viewpoint measurements is what you are telling the



1 Board based on your observations?

2 A. On my observations.

3 Q. Apart from those, did you
4 undertake or review any other materials to assess
5 visual impact in preparing your planning analysis?

6 A. I read all the visual impact
7 reports produced by the Region's consultants, and I
8 would say that in the final technical report the
9 conclusion reached was that overall the visual impacts
10 of locating a landfill at Site F is considered medium
11 to low and my view is that it would certainly be low
12 rather than medium and so from my observations, after
13 having read that report, I don't think it would in any
14 way -- it wouldn't be higher than low, if I can put it
15 that way.

16 Q. In the end, what significance do
17 you attach in a land use planning context to the
18 potential for impairment of views as a result of the
19 introduction of landfilling at Site F?

20 A. I do not believe from a visual
21 point of view there would be any significant adverse
22 impact on those people who can see the site.

23 Q. Mr. Bacon, the next section of
24 your report again in Chapter 5, starting at page 77
25 deals with what you have called the social planning



1 issues. You told us earlier at the outset of your
2 evidence what you meant by the term social planning or
3 what you understood that concept to mean. In the
4 context of Site F and the Region's proposal for
5 landfilling at that site, would you outline for the
6 Board please what was involved in your consideration of
7 this issue?

8 A. I looked at all those factors
9 which I outlined at the start of my evidence, Mr.
10 Chairman, that I considered important, and we have gone
11 through many of those in respect of them, social
12 planning issues, and the relationship between social
13 planning and planning as a discipline. We have
14 discussed many of those, particularly the social
15 impacts, real or perceived. I looked at all the
16 factors which have been discussed in the Region's
17 reports. I recognise and acknowledge that landfilling
18 is an unpopular but necessary land use and therefore
19 the objectives should clearly be to locate landfill
20 where it has the least impact. I have noted the
21 distances of people from the site and I disagree with
22 any of the statements that Dr. Schiff made with respect
23 to her investigations and her conclusions and came --
24 her conclusion was that it's the most preferred or Site
25 F is the most preferred with respect to population



1 impact and that it ranks second under emotional impact.

2 Having looked at the question, the questions I have
3 already dealt with, noise, dust, odour, traffic and so
4 on, and having looked at the question of displacement
5 which is an important social impact....

6 Q. What do you mean by that?

7 A. Where people are actually affected
8 by having to move their houses or be expropriated or
9 affected in such a way that they believe they will have
10 to move because they wouldn't be able to stand a
11 landfill in proximity, or the proximity proposed.

12 Q. In your view will that happen at
13 Site F?

14 A. I don't think there is anyone on
15 site to start with so nobody has to move and I don't
16 believe, as I have said, that the surrounding or
17 properties within potential or possible views or who
18 have potential or possible views of the site will move
19 because they won't be affected in any serious way. I
20 don't think any jobs are likely to be affected, which
21 of course is an affect on people, and I don't believe
22 any community facilities in terms of buildings, such as
23 schools, community centres and so on, are in any way
24 affected, there just aren't any there, and the only
25 recreation facility that is possibly affected in some



1 way may be the equestrian facility, and that is the
2 only facility I think that would be in any way
3 affected.

4 Effectively at F there are no facilities
5 or jobs or residents who would be effected enough to be
6 considered that they have to be displaced, nor do I
7 consider the disruption factor which was taken into
8 account by the Region's consultants, that there would
9 be residents, properties or day-to-day activities or
10 public facilities or the community itself affected,
11 because it is not part of a community, it is totally
12 separated from any community. All of those are valid
13 inputs into planning considerations and it is my
14 opinion that there simply will not be any impact except
15 for, in some people's view, the equestrian facility and
16 somewhat obscured views from four houses.

17 So, my conclusion is that having
18 conducted my own observations and so on and
19 investigations and reading the Region's report, it is
20 an unpopular land use, but it is necessary, it is
21 unwanted in any area, it's unusual to have people as
22 there are in this case happy and prepared and
23 supporting and in favour of a landfill, that is the
24 owners, Azova and NSP, and that it is entirely
25 consistent with the objective I stated at the beginning



1 from a land use planning point of view and from a
2 planning point of view to locate a landfill where it
3 will do the least damage to anyone, and I think Site F
4 clearly fulfills that.

5 Now, bearing in mind the specialized
6 reports, I believe that the impacts they say, and I
7 believe it also be true, but they will be small,
8 insignificant.

9 So, it is really an unusual site. It is
10 isolated, the natural topography hides it, it doesn't
11 make it a scar on the landscape and won't, even during
12 its active operation. It has been called the badlands,
13 and when completed and rehabilitated, it certainly
14 wouldn't be badlands. It is a considerable distance
15 from anybody who could conceivably be affected and the
16 transportation is excellent. It won't harm anybody
17 and it won't upset established practice and people
18 won't be changed in their feelings. It does have all
19 the hard services that are required and so from a
20 social viewpoint, planning viewpoint, in my book it is
21 a perfect site and one may be able to find one that is
22 as good, but it is a perfect site and would rank 9.9
23 out of 10 on a mark scale in my view.

24 Q. I should put this question to you
25 differently. Do you as a professional planner of great



1 tenure in your field, recognise as having any
2 significance or any relevance the concept of locational
3 equity in siting a landfill if I can put it that way?

4 A. Yes, I do.

5 Q. Is that a legitimate issue in
6 planning terms?

7 A. Yes, I think it is.

8 Q. What do you understand by that?
9 What do you understand that term to mean?

10 A. It's called both things, social
11 equity or locational equity. The Region of Peel has
12 termed it locational equity, and I think perhaps that
13 is a good word for it. It has been trying to grapple
14 with this problem for months or for years. Generally
15 what I think it is, is it's a concern with what is a
16 fair solution to a problem when there are competing or
17 conflicting desires, views and demands. Everybody
18 isn't going to be satisfied and there are always going
19 to be some people who are not satisfied. So, it's a
20 trade-off situation. Garbage, as I am sure the Board
21 knows, has inspired heated debates everywhere. It was
22 the genesis, I believe, of the word NIMBY.

23 Q. Sorry?

24 A. The word NIMBY, which is not in my
25 back yard, and there is an international conference on



1 NIMBY, or was recently, because nobody wants it. So,
2 recognising that, one has to consider in this
3 locational equity who produces most of the waste as an
4 important factor as to where it should be dumped or
5 landfilled.

6 Q. Did you consider that in your
7 assessment?

8 A. It is clear from the Region's work
9 and from the regional official plan and the reports
10 produced....

11 Q. What have you put up?

12 A. Schedule I to our report under tab
13 8 and in that it is clear that the major urbanization,
14 and this is taken from the Region of Halton Official
15 Plan, Table 1B, page 51 and blown up....

16 Q. Is that the schedule, so the
17 record is clear, where you indicated to the Board at
18 the outset of your evidence that Acton and Georgetown
19 had been reversed and you had corrected it on this
20 mock-up?

21 A. That is correct and this is
22 Georgetown and this is Acton in the northeast part of
23 Halton Hills.

24 Q. Could that be marked as the next
25 exhibit.



1 MR. LANCASTER: N-605. I am sorry,
2 604.

3 --- EXHIBIT NO. N-604: Chart - Schedule I from
4 Exhibit N-586.

5 MS. CRONK: Q. What does the schedule
6 indicate?

7 A. This indicates the population in
8 1986 and 2001.

9 Q. Based on what?

10 A. Based on Halton's Official Plan,
11 Table 1B, page 51. I recognise that the figures have
12 changed somewhat as a result of Mr. Cam Watson's later
13 work, but the weight are still similar.

14 Q. What do you mean by that?

15 A. The substantial bulk of the
16 population will be in the southern part of the region
17 and Burlington by the year 2001 will have 170,000
18 people; Oakville will have 141,000 people and in the
19 northern part Milton, which is this whole municipality
20 of course including the urban area, will have about
21 37,000 people and Halton Hills, 50,000 people. The
22 whole north combined is going to be very small in
23 comparison -- it's only 87,000 people, in comparison
24 with at least 141,000 in Oakville and 170,000 in
25 Burlington. It is clear where the people are and
therefore where the garbage is produced.



1 Q. Are you aware of the fact that the
2 Board has received evidence concerning population
3 projections during the course of this hearing?

4 A. Yes.

5 Q. Did you review any of the
6 materials put before the Board in that regard?

7 A. I did.

8 Q. What did you look at?

9 A. I looked at this relative weight
10 and it's still clear from Mr. Cam Watson's work and
11 others' work that the weight of population will still
12 be at the south end. It is clear in my view, and in
13 social equity terms, it is appropriate to consider in
14 an important way that the garbage be disposed of where
15 it is generated, both industrial and residential of
16 course, because we are talking about acceptable waste
17 at this site. From that point of view, which is not, I
18 would say, a scientifically quantifiable viewpoint, but
19 it is one which I think is beginning to be accepted,
20 there are powerful arguments for putting it in the
21 south, and bearing in mind that there are no absolutes
22 in this, and I don't think there ever can be.

23 I believe in the south end it is
24 appropriate.

25 Now, in taking this further, Mr.



1 Chairman, I attempted to find out, because this is one
2 of the factors that Peel is considering as extremely
3 important, but where garbage has been disposed of in
4 the past in the Region. The Ministry of the
5 Environment keeps careful records of sites that it,
6 either under its predecessor the Waste Control Act and
7 now under the Ministry of the Environment's mandate....

8 Q. You have put up a panel and would
9 you explain briefly to the Board what that is?

10 A. It keeps records of all open and
11 closed sites in the province. I obtained from the
12 Ministry a list of all the sites which were open and
13 closed, had been opened or closed in the now Region and
14 I have plotted them and they are shown in colours on
15 this map. Would this be an exhibit?

16 MS. CRONK: Could that be marked?

17 MR. LANCASTER: N-605.

18 MS. CRONK: I have distributed to my
19 friends a reduced version.

20 --- EXHIBIT NO. N-605: Map of landfill sites in
Halton Region.

21 THE WITNESS: This map shows in orange
22 the closed sites, and one can see there have been a
23 number in Acton and over in the west part of Milton, a
24 considerable number in the Georgetown area, in the
25 northerly part of -- south of Milton, the urban area of



1 Milton, in north or central Oakville, between
2 Burnhamthorpe Road and Highway 5, in east Oakville
3 south of Highway 5 and north of Upper Middle Road and
4 in south central Oakville. There has also been one over
5 in the Bronte area and there have been three sites
6 effectively in the western part of Burlington, north of
7 Highway 403, one of which of course is the existing
8 site. Orange is closed and blue is closed and
9 certified and yellow is open and certified and you can
10 see the only one open and certified is the existing
11 regional landfill site immediately adjacent to Site F.

12 Q. The map, does it also indicate
13 industrial sites?

14 A. Yes. It shows uncoloured, the
15 industrial sites, open and closed, the little stars,
16 and I can point them out. The stars for closed sites;
17 there are two of them in the area just south of 401
18 Highway, a number in the Oakville area, central
19 Oakville area. There is one in Burlington east of the
20 Queen Elizabeth Way as it turns south and south of the
21 Queen Elizabeth highway and one in Acton, which is the
22 tannery site, I believe, and two others or three others
23 in the northeastern part.

24 It is pretty clear, Mr. Chairman, that
25 each municipality has received at least some share. I



1 have been unable to find what size those sites were,
2 but I know when they were opened and when they were
3 closed.

4 Q. At my request, did you prepare a
5 summary sheet identifying the names of these sites and
6 their locations?

7 A. Yes, Mr. Chairman, entitled Waste
8 Disposal Sites, and it is split up....

9 Q. Is that a copy of the summary
10 sheet?

11 A. Yes.

12 MS. CRONK: Could that be marked as the
13 next exhibit?

14 MR. LANCASTER: N-606.

15 --- EXHIBIT NO. N-606: List of waste disposal
16 sites in Halton.

17 MS. CRONK: Q. What does this summary
18 sheet set out, Mr. Bacon?

19 A. It shows, Mr. Chairman, that
20 Milton had five sites, the last one closing in 1974,
21 Oakville has had eight sites....

22 DR. KINGHAM: Can you explain the one
23 closed, two closed in 1974 in Milton. What is a
24 methane gas disposal site; do you know?

25 THE WITNESS: Actually, no, sir. I have
no idea.



1 DR. KINGHAM: I have never seen the term
2 before.

3 THE WITNESS: It may be a comment.

4 MR. LEITCH: I think that's right.

5 MS. CRONK: Q. Where did the
6 information on the sheet come from?

7 A. It came from the MOE sheets.

8 Q. Do you have them?

9 A. I do.

10 Q. Unless Dr. Kingham requests it
11 now, over the noon break could you confirm what the
12 sheet says with respect to that site?

13 A. Yes. It is probably methane gas
14 monitoring because I don't think anyone dumps methane.
15 I am sorry about that.

16 DR. KINGHAM: I would be very difficult
17 to do.

18 THE WITNESS: Except perhaps in barrels.
19 In Oakville there are eight sites, and it states the
20 type of site. In Burlington, there have been three
21 sites and in Halton Hills there have been eight sites
22 -- sorry, in Halton Hills there have been thirteen
23 sites. So, while the quantities in each of those sites
24 have not been investigated, I was not able to find out
25 from the MOE, it is clear that everyone has had a fair



1 number of sites around, and in terms of locational
2 equity, I think that strengthens my argument that the
3 part of the region that produces most of the waste
4 ought to have the major facility, if not the facility
5 for disposing of it. So, my conclusions in terms of
6 equity are one, that there have been landfill sites in
7 many parts of the region, in most parts of the region,
8 and unless there are sites in each part of the region,
9 however you define that, some municipality will feel
10 aggrieved. Third, it is the region, the Regional
11 Municipality that is specifically charged with the
12 responsibility for solid waste including its management
13 and disposal, and its consultants have clearly
14 determined that there is one preferred site. I believe
15 that environmental suitability, which is many factors
16 including the paramount one of safety and the economic
17 considerations which the region has investigated but I
18 haven't, must be satisfied.

19 In Halton, this has clearly led to one
20 site being the most preferred on all the grounds that
21 have been investigated and in my view, and I differ
22 slightly from the Region's consultants on this, but it
23 is only a matter of degree, I believe that Site F is
24 very much preferred over the other ones for the reasons
25 I have set out.



1 Q. Mr. Bacon, you have indicated what
2 your opinions are in planning terms with respect to
3 Site F and its suitability for a landfill use and
4 chapter 6 of your report, as I understand it, concerns
5 the potential for development of the land for other
6 uses; is that correct?

7 A. Yes, Mr. Chairman.

8 Q. Did you in fact, as part of your
9 work over the years for National Sewer Pipe and as part
10 of your work in preparing this report, investigate the
11 potential that these lands could be used appropriately
12 in a planning sense for something other than landfill?

13 A. I did.

14 Q. Would you outline for the Board
15 what the nature of your investigations were and the
16 work you undertook with respect to such potential
17 alternate land uses?

18 A. Yes. When we initially looked at
19 the site in 1979, during the summer of 1979, I said
20 that I carried out what we termed a feasibility report
21 which was to see what potential there might be for all
22 sorts of land uses, although specifically we were asked
23 to determine the feasibility of a landfill site, but in
24 our judgment at that time, and subsequently and in the
25 Region's judgment, it perhaps would be desirable to not



1 use for landfill the whole of the site. At that time,
2 and we have said it in writing, part of the site might
3 be used for a recycling plant and some perhaps for an
4 Energy from Waste plant and those matters were in a
5 very preliminary way looked at. We also considered
6 whether there might be some potential for other uses
7 and it was noted that residential -- immediately we
8 concluded that residential use was clearly out.

9 Q. Why?

10 A. It was clearly to be discounted
11 because of the existence of the existing sites in the
12 area and that commercial was an unreasonable, even
13 thought, even if it would be permitted by the Ministry
14 under its guidelines and by anybody else, and that
15 agriculture we have explained is not really a factor in
16 the area because of the topography, soil and the whole
17 lack of agricultural infrastructure in the area and
18 that industrial was conceivable and we looked at that
19 in a very preliminary way, having undertaken many
20 industrial development schemes from Newfoundland
21 through to Alberta and right across Ontario, both
22 northern and southern. My initial conclusion was it
23 was too expensive to even try it for a whole variety of
24 reasons.

25 Recreation. Clearly the after-use, the



1 rehabilitation use is likely to be recreation and on
2 many occasions this has been suggested. So, we didn't
3 consider that at that time and in that initial
4 feasibility study that the only conceivable alternative
5 of industrial would be -- or likely to be acceptable
6 from any point of view. We were asked later to look at
7 this in more detail by NSP and we actually did some
8 potential development schemes for the area. One of the
9 things which one must take into account in doing this,
10 of course, is the area that one is dealing with. The
11 southerly part of the site, up to approximately where
12 my pointer is....

13 Q. You have your pointer where?

14 A. Just to the south of the north
15 boundary of the southerly part of Bayview Park.

16 Q. On MR548?

17 A. MR548, but about that much of the
18 site is in a special complementary use area where
19 industrial development would be permitted under certain
20 onerous circumstances, and by onerous I mean there are
21 tough rules and they should be and we had to look at
22 those.

23 Q. I am sorry, but perhaps you could
24 outline for the Board if you would please what you did
25 look at in terms of the applicable policies relating to



1 its potential for industrial development on this land
2 and what conclusions as a planner you drew, based on
3 your analysis of those policies and your knowledge of
4 the site?

5 A. Yes. First in a general sense, we
6 looked at the advantages and disadvantages and the
7 advantages clearly are that it has some exposure to the
8 North Service Road and in fact it does have exposure to
9 the North Service Road for part of the site and the
10 triangular parcel of land is also owned by NSP, and it
11 is smaller than this because the hydro line comes
12 across and its southern boundary is not shown. So, you
13 can see it from the service road but you can't see it
14 very much from 403 for the topographic reasons I
15 explained, the rise in the service road which cuts off
16 most of the view from 403 almost to the hydro line. So
17 there is limited exposure to the major expressway,
18 which of course is an advantage.

19 It is on a road that has some good
20 quality industrial development and there is industrial
21 labour in the Burlington area, the Burlington-Hamilton
22 area, and so there are some advantages. The
23 disadvantages, however, substantially outweigh the
24 possibility.

25 The first thing is that it is not easy



1 to get approvals to develop the land and you would have
2 to go through plans of subdivision because of the
3 surrounding circumstances or uncertain circumstances on
4 the side of topography, there being the case of a
5 landfill site and there would have to be methane
6 testing and that would go on over at least a year, if
7 not longer, and we believe that the approvals process
8 for industrial development, which would probably only
9 be marginally economic, it would not be worth it and
10 since 1981 we have been with an application which has
11 not yet proceeded anywhere.

12 Then, the second thing is to get that
13 general approval. There is a comprehensive restricted
14 area by-law, the Minister's Regulation which supercedes
15 Burlington's by-law, and it has some pretty tough
16 regulations. First of all there is 20 per cent
17 coverage. That is very low for any industrial site.
18 Normally we expect to get at least a 35 per cent
19 coverage and in urban areas where the land is expensive
20 in the Golden Horseshoe, industrial land is expensive
21 and we often get up to 50 per cent coverage.

22 Q. I am sorry to interrupt, but I am
23 a bit confused as to what you are referring to. When
24 you talk about the comprehensive regulation, what is it
25 that sets out that setback?



1 A. That is set out in the Parkway
2 Belt West Plan itself.

3 Q. Could you point that out to the
4 Board so we are clear what we are talking about and
5 which portion of the site you are talking about?

6 A. The special complementary use area
7 is the southern part where industrial development of
8 specific character and by specific regulations would be
9 permitted, and the northerly part, you say you wouldn't
10 get any industrial use and my judgment was that it
11 would be almost impossible to get that changed, but I
12 suppose anything is possible.

13 Q. Is industrial development of the
14 northern part of the land permitted under the current
15 policy documents?

16 A. It's not.

17 Q. It is on the south.

18 A. It is on the south and under
19 certain circumstances and there are restrictions which
20 are set out in the plan.

21 Q. Could you take me to that and what
22 specifically are you referring to? This is Exhibit
23 H-319, Mr. Chairman.

24 A. Section Q or rather subsection (q)
25 of clause 6.2.3 on page 31 of the plan states:



1 "The Special Complementary Use Area
2 located north of Highway 403 between the
3 Burlington landfill site and the
4 Burlington-Guelph electric transmission
5 line, permit uses set out in Section
6 5.5.1."

7 So I must turn back to 5.5.1 to find out those and the
8 next section:

9 "Subject to Section 5.1.3, the plan
10 permits some further industrial
11 development in this area."

12 The area, the subject site, Site F:

13 "The plan does not permit uses though
14 set out in Section 5.5.1."

15 And then....

16 Q. Does not?

17 A. Does not, beyond those set out in

18 5.5.1.

19 "Until a comprehensive restricted area
20 by-law and development agreements under
21 Section 35 (now Section 40) of the
22 Planning Act have been prepared in
23 consultation with municipal authorities,
24 provincial ministries and other
25 concerned persons or agencies and



1 subsequently approved by the appropriate
2 authorities."

3 So that is a time question because you
4 have two agencies involved in amending those
5 regulations and considering all the matters required.
6 I am not saying they are wrong, but it does take a lot
7 of time.

8 Then the next paragraph:

9 "Buildings and structures associated
10 with such industrial uses may have a
11 maximum lot coverage of 20% exclusive of
12 parking and shall meet the following
13 conditions."

14 Q. Is that what you were referring
15 to?

16 A. Yes. The first one is that it is
17 restricted to a 20 per cent coverage, which is
18 unusually low and, as I say, that has a substantial
19 effect because with a 20 per cent coverage, one is only
20 getting use of one-fifth of the site, a little under
21 9,000 square feet for every acre.

22 Secondly -- and the norm as I say is 35
23 to 50 per cent site coverage. Secondly, there are
24 height limits of one floor for industrial uses and two
25 floors for office uses and those are set out further



1 down.

2 "Buildings or structures for
3 industrial purposes to not exceed a
4 maximum of one storey in height and
5 buildings and structures with associated
6 offices not to exceed a maximum of two
7 floors."

8 So, with height plus coverage, the floor
9 space index immediately drops to a very low figure and
10 one would normally expect in industrial development to
11 get in the region of 0.7 to 1.0 f.s.i., but in this
12 case of course, it is substantially lower than that
13 because you are only getting 9,000 square feet per
14 acre.

15 Q. The Chairman will forgive me, but
16 f.s.i?

17 A. Floor space index or floor area
18 ratio. It goes under a number of things, but it is a
19 measure of efficiency of development and obviously one
20 wants to optimize it and not maximize that.

21 C, as it says in Section (ii), "All uses
22 except parking are enclosed" and so at least
23 theoretically you can't park anything or you can't
24 store anything outside, even barrels of whatever you
25 may have. You have got to put it all inside and that



1 is a further curb. I am not saying it's improper or
2 wrong or outrageous in any way, but it is a rule and it
3 is a fairly tough one in the circumstances in which one
4 finds oneself here.

5 Lastly, but by no means least, there is
6 a 400 foot setback or 120 metre setback from the
7 service road. So, as we have seen on the topographic
8 maps, some of the flattest land is in the southerly
9 part and that is where the biggest setback is. So, one
10 has a whole series of physical problems to deal with
11 which make it difficult to produce an economically
12 viable development.

13 Q. What implications do setbacks of
14 that kind have for the use of the land? Are setbacks
15 of that kind normal for industrial development or are
16 they unusual or abnormal?

17 A. They are larger than is normally
18 found. One can see -- normally a setback on industrial
19 development is in the region of up to 25 or 30 metres
20 and these buildings are sometimes set back for prestige
21 purposes and so on, but that is a normal requirement,
22 25 or 30 metres, and this one sets it back and one is
23 allowed visitor parking in front of course and
24 presumably one would be here, but it is an unusually
25 large setback, yes, really an unusually large setback.



1 So, that has an effect on your coverage and
2 particularly in this case because of the topography of
3 the land. You must fill up those valleys in order to
4 use much of it and then you have very low coverage and
5 then you must spend a lot of money grading.

6 Q. Collectively what is your view as
7 to the development criteria set out in this section of
8 the Parkway Belt West Plan for industrial use at
9 Site F?

10 A. I think it is reasonable to do
11 that in the Parkway Best West Plan area because they
12 have certain objectives of keeping the area open and
13 having prestige plants there and not having open
14 storage. I'm not grumbling with the criteria, but I am
15 saying on this site it was particularly onerous because
16 of the topographic conditions together with all the
17 other problems we would have to deal with. So, we felt
18 on more detailed consideration that that was marginal.

19 Then we had one other problem to deal
20 with. To design a plan of subdivision bearing in mind
21 the topography and the fact that the services or water
22 had to come from the south and must be looped somewhere
23 or other within an industrial subdivision, you have got
24 to know what you are going to do with the northerly
25 part, if anything.



1 Q. Why?

2 A. Because you have to interconnect
3 through roads, you must consider the invert level of
4 services, of sanitary sewers and storm sewers, and
5 there undoubtedly would be, because of the nature of
6 the surrounding land uses on Bayview Park and the
7 regional site here, one would have to have a good deal
8 of consideration to storm water management from a
9 quality as well as quantity point of view. So, we
10 would have to design a system that would work
11 effectively in conjunction with what is going on and
12 what would be completed eventually and what has gone on
13 at Bayview Park. It is complicated system one would
14 have to deal with and one must have regard in designing
15 the southerly part to what is conceivable on the
16 northerly part, and so we designed a series of concept
17 plans to see what we could get on that land, and it is
18 very inefficient because of length of roads, to start
19 with. You must come through the southerly triangle and
20 get across the hydro line and immediately you have some
21 non-saleable frontage ratio as a result of that and
22 then everywhere one gets a low percentage ratio, and by
23 percentage ratio we just the efficiency of a
24 development on what's call the saleable lot frontage
25 ratio. If you have a perfect piece of land from a



1 developer's financial point of view, you have a
2 triangular shaped piece of land with a road right in
3 the middle, so that for every foot of road you build
4 you get two saleable feet of frontage on either side of
5 it. The moment you go around a corner, then that ratio
6 drops because you have only got a certain amount of
7 frontage to sell and the flankage is given away
8 effectively. So you must try and minimize consistent
9 with reasonable planning principles, sight lines,
10 topography and so on, minimize the loss of saleable
11 frontage because that in a metropolitan area is up to
12 \$3500 a running foot in residential developments --
13 sorry, per metre. You can see that that is a very
14 expensive proposition to lose too many feet and on this
15 site you have a setback of 400 feet to start with and
16 secondly you have got difficult topography and so you
17 are having to manoeuvre around things, because the
18 Ministry won't go on grades except in exceptional
19 circumstances where it is very prestigious, like CTC on
20 the north side of 401, they like grades of between 1
21 and 2.1/2 per cent and to get that sort of grade across
22 here would be difficult.

23 Q. Does the City of Burlington by-law
24 permit industrial development on the southern part of
25 Site F?



1 A. Yes, it permits it on this little
2 triangular parcel in here and so it's about that much,
3 Mr. Chairman, as I'm showing on the exhibit, a very
4 small parcel.

5 Q. Does it permit it anywhere else in
6 the Special Complementary Use Area?

7 A. You couldn't get it in there
8 because of the setback.

9 Q. I understand the point you have
10 made where it is permitted, but is it permitted in any
11 other portion of the Special Complementary Use Area as
12 designed under the Parkway Belt West Plan?

13 A. Not the by-law and of course the
14 regulation would have to be amended to permit as I read
15 earlier. It was zoned prior to the Parkway Belt West
16 Plan adoption as development which is a holding zone.

17 Q. In the end, as a planner, what
18 were your conclusions regarding the suitability of the
19 site and lands for industrial development?

20 A. While some industrial development
21 would be permitted, the constraints would make it very
22 unattractive for an owner to develop and, secondly,
23 that if only the south part was developed for
24 industrial purposes, it would effectively sterilize the
25 north and to give access to the north would be



1 expensive and very uneconomic and since one couldn't
2 for all practical purposes ever anticipate you could
3 develop the north between two landfill sites for
4 industrial purposes, then it was my opinion and my
5 recommendation in 1979 and later when we looked at it
6 in more detail, to the client that it was not
7 appropriate to attempt to develop it for industrial
8 purposes and a sanitary landfill area would be a much
9 more appropriate use.

10 Q. What do you consider the most
11 appropriate and desirable use of the Site F lands, Mr.
12 Bacon?

13 A. For sanitary landfill purposes for
14 all the reasons I have outlined.

15 Q. Mr. Bacon, could you then outline
16 for the Board if you would, please, in a summary way
17 what in the end, after the work you did and the views
18 you have undertaken, what were your conclusions
19 regarding the suitability of this site for landfilling
20 be it by National Sewer Pipe or by the Region?

21 A. Well, Mr. Chairman, the use of the
22 NSP land, and this is on page 95, but the use of the
23 NSP land as proposed as the most appropriate land use
24 that the planning context of the NSP land renders it
25 unusually suitable for sanitary landfill purposes and



1 that sanitary landfilling can be carried out in an
2 environmentally sound and prudent manner with little,
3 if any, disruption to existing land uses and users.

4 In forming these opinions, we had regard
5 to the those factors particularly relevant to land use
6 planning considerations and in addition, where
7 appropriate, have considered the results of the studies
8 by the Region. We concluded therefore that the use by
9 the Region of the NSP lands for sanitary landfilling
10 would constitute a public use of the land and it would
11 be consistent with the policies and goals of the
12 Parkway Belt West Plan and the regulations related to
13 it; that it was indeed an interim use as contemplated
14 by the Parkway Belt West Plan, the Official Plan of the
15 Region, the Mineral Aggregate Resources Policy
16 Statement and that it would be a substitution of one
17 permitted interim land use for another, pending
18 ultimate mandatory rehabilitation.

19 Six, the Region's proposed after-use of
20 the NSP land, following completion of landfilling,
21 would meet the low density, low intensity criteria set
22 out in the Parkway Belt West Plan policies and further,
23 is supported by the provisions of the Regional Plan and
24 the general goals of Parkway Plan, and I think it is
25 important to consider not only the use itself, but what



1 happens afterward.

2 So, the use of the NSP lands for
3 sanitary landfilling at Site F has the following
4 advantages from a planning perspective:

5 It would be compatible with existing
6 surrounding land uses. It would be consistent in
7 planning terms with the efficient use of the land.
8 It would be a use which would provide greater
9 clarification and greater certainty in terms of
10 rehabilitation under the Pits and Quarries Control Act.
11 The use would conform -- and I have written in that
12 comply but it should have been conform -- and advance
13 the stated objectives of the Food Land Guidelines,
14 which we went through in detail and the Food Land
15 Preservation Policy, and not just by not -- not by
16 putting a non-agricultural use in an agricultural area,
17 but by preventing the removal of land suitable for
18 agricultural purposes out of production and by
19 preserving agricultural communities elsewhere in the
20 Region. So, it fulfills two objectives and advances
21 them in two ways.

22 It will advance the stated goals of the
23 Ministry of Agriculture and Food and we have letters in
that regard. It would not result in any significant
negative impacts on residential populations or



1 communities, partly because they are not there and the
2 people who are there I don't think would be affected.
3 The land can be easily serviced, both for sanitary
4 landfill services and with urban services. The
5 selection of the NSP land is an appropriate location
6 for the regional landfill would have the effect of
7 locating the Region's new landfill in an area where the
8 highest volume of domestic waste is located, and that
9 is addressing the question of social or locational
10 equity.

11 Our investigations and those of the
12 Region indicate that it is probable there would be no
13 negative noise, transportation, odour, dust or visual
14 impacts by the selection of the site or use of the site
15 and if any negative impacts did obtain, it is probable
16 that the strength of the impact would be negligible. I
17 thought carefully about my use of words there, because
18 none of those things are absolute.

19 Based on studies conducted by our own
20 collaborators, consultants, Morrison Beatty and the
21 Region's -- Hydrology Consultants, landfilling at Site
22 F and therefore the NSP land would not result in any
23 negative hydrogeological impact.

24 There is no amendment to the Parkway
25 Belt West Plan or its relevant regulations or the



1 Regional Official Plan or the City of Burlington's
2 Official Plan or zoning by-law required because it is
3 clear that it does in fact conform with the policies
4 and does not require any amendments to any of those
5 documents. While a portion of the NSP land could be
6 utilized for industrial purposes in accordance with
7 general policies under the Parkway Belt West Plan, the
8 constraints to that use are so severe that I do not
9 believe that I could recommend it to our client, NSP or
10 anyone else, because I believe that they are so severe,
11 and certainly it would be more appropriate and
12 desirable to use the land for sanitary landfill
13 purposes.

14 MS. CRONK: I am in your hands. I would
15 expect I would be in-chief approximately another half-
16 hour with Mr. Bacon, because there are a number of
17 matters with respect to Site D to which he would like
18 to draw your attention. If you wish, I can continue
19 until 1:00 o'clock or I am in your hands as to whether
20 you wish to rise now.

21 MR. LANCASTER: I think the Board would
22 prefer to rise now and come back at 1:45, but Dr.
23 Kingham does have a couple of questions.

24 DR. KINGHAM: Just to clarify, on page
25 78 you quote certain distances which don't seem to



1 correspond to the exhibits you have shown us and I
2 wondered if that was because you were considering a
3 different fill area at that time?

4 THE WITNESS: Yes, Mr. Chairman. The
5 distances are from NSP's fill area and not the Site F
6 fill area.

7 DR. KINGHAM: The distances to the north
8 and south reflect a very much circumscribed fill area?

9 THE WITNESS: That is correct because
10 our -- I shouldn't say our, but the NSP property which
11 we were looking at, stops there (indicating) and under
12 the NSP thing there is a 100 metre setback from there,
13 so in fact we are measuring from here and not from here
14 and those were the dimensions.

15 MS. CRONK: I should have invited an
16 explanation of that because it does appear at a number
17 of locations in the report.

18 DR. KINGHAM: The second question I had
19 is you used the term, and one I have become very chary
20 of in the past twenty years in environmental work, but
21 safe. You said you had reviewed the hydrogeological
22 information and considered the site was in all respects
23 safe from a hydrogeological perspective. I just
24 wondered what you mean when you use the term safe with
25 respect to environmental impact?



1 THE WITNESS: I don't think from
2 everything I have learned from our own engineers, and
3 there have been a lot of them working on this, that
4 there is ever a one hundred per cent guarantee that
5 there will never, ever be any deleterious effect on
6 anyone from anything that goes on in landfill, be it
7 both solid, hazardous waste or any sort of waste except
8 possibly for clean fill. So, the terms safe is not an
9 absolutely absolute one, but to the best knowledge or
10 in the judgment of those who are expert in the field of
11 hydrogeology, they considered the risks so small as to
12 be essentially negligible of, (a), escape and, (b),
13 affecting anybody. I must accept their judgment
14 because I certainly could not work out the rate at
15 which leachate might or might not -- if there was a
16 failure and the proportions were taken, I couldn't work
17 out how quickly it travels and what its chemical
18 characteristics might be when it got to wherever it
19 might affect people, because we are obviously talking
20 about if there is a failure at the south end of all the
21 systems put in, the leachate control systems for
22 putting it into the sewers and so on, what affect there
23 might be on these people in a chemical sense. I really
24 don't know, except I do know and have taken this into
25 account, that there is a large area here and it has



1 swamp and bulrushes and so on and these people are
2 behind a whopping great berm of a railway track, but I
3 don't know what the effect might be.

4 DR. KINGHAM: I did want to have your
5 impression and your feeling.

6 THE WITNESS: They think it will not
7 deleteriously affect anybody and that is what I
8 gathered from reading the Region's reports and
9 certainly from our own, Morrison Beatty Consultants.

10 MR. LANCASTER: 1:45 p.m.

11
12 --- Luncheon Adjournment (12:30)
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1 --- Upon resuming at 1:45 p.m.

2 MR. LANCASTER: Please be seated.

3 MS. CRONK: Q. Mr. Bacon, one matter
4 arising from your testimony this morning. You spoke on
5 a number of occasions about the concept of efficient
6 use of the land at Site F. Could you outline for me
7 what you mean by that, what is involved in the concept
8 of land use efficiency?

9 A. In purely development terms,
10 assuming that all the other aspects that one takes into
11 consideration are satisfactory, in other words, there
12 is traffic capacity and there is sewer capacity at the
13 outlet of the site and one isn't going to be a problem
14 to adjacent land uses and so on; it is a measure -- it
15 is really a cost benefit and in all development
16 applications, initially in preliminary concept design,
17 we eyeball it and one feels it and one can look at a
18 piece -- at a design that one has done and has said
19 that that is inefficient because of the saleable lot
20 frontage, the amount of cut and fill one is likely to
21 have, the length of sewers, watermains and sanitary
22 sewers -- stormwater sewers that aren't effectively
23 used, the gradient of the land, because the flatter it
24 is the bigger the pipe and the more expensive the pipe

25



1 because it must still have the same amount of cover,
2 the way in which one might use easements. It's a whole
3 series of factors which one after a lot of practice,
4 and I have had over thirty years at it, one can see
5 automatically and if there is a problem, then you
6 change the design. When one gets down to a level which
7 is fairly detailed and you get a rough lotting on it,
8 one takes a greater look and actually measures the
9 length of road and measures the saleable frontage and
10 measures the length of storm sewers and sanitary sewers
11 and watermains because one can frequently get the same
12 number of lots but it may cost a lot more to do it
13 because you haven't used the best gradient for the
14 roads so the pipes are as shallow as they can be to
15 have the proper invert in order to get to the outlet,
16 and one uses the most effective piece of land for park
17 and school frontage. One doesn't want to have two
18 frontages for a school and the school board don't like
19 it because it costs the client money. All these things
20 are something where you can look at a plan and see,
21 after you have had a bit of practice at it, and having
22 seen it you can change the plan around and then you get
23 into more detail. Efficiency is a measure of the
24 costs versus the benefits and they are not entirely in
25 monetary terms. For instance, a school board wants a



1 minimum amount of frontage because that's what it pays
2 for but it wants relatively flat land, but it also
3 wants land, generally speaking, that is adjacent to a
4 park, but the park must fit into a system of walkways
5 and access for residential areas and so on and all
6 those things are related to the design so that it
7 really fits comfortably together and that is what
8 efficiency of the use of land is after you have taken
9 the external factors into account.

10 Q. Can we now turn to Site D?

11 A. Yes.

12 Q. You earlier indicated to the
13 Board, as I recall your evidence, that you have not
14 undertaken a detailed planning analysis with respect to
15 Site D?

16 A. That is correct.

17 Q. Did you in general planning terms
18 consider the suitability of Site D for landfill?

19 A. I did.

20 Q. Could you outline for the Board
21 please the factors you considered and your conclusions
22 with respect to the suitability of Site D for
23 landfilling from a general planning perspective?

24 A. Yes, Mr. Chairman. I visited the
25 site specifically to look at it and drive around at it



1 and look at the adjacent land uses and the area for one
2 concession to the east and two concessions to the west
3 on Bell Line, where the Burlington Air Park is, and I
4 have been to the Tremaine site and looked at that and
5 its relationship to the current proposed D Site.
6 I have made a number of observations with respect to
7 the way in which the traffic moves on Highway 25, the
8 main entrance to the site, and the amount of traffic
9 there is on Lower Baseline and Britannia Road and First
10 Line. I have looked at the houses and their
11 relationship to the site and their relationship to the
12 level of ground in the area. I have looked at the
13 apparent prosperity of the farms in the area, which is
14 some measure as to whether it's a real farm community
15 and I have looked at the tiny little hamlet of Boyne at
16 the intersection of Highway 25 and Britannia Road and I
17 have looked at the uses that are in the area, Mr.
18 Martin and his aircraft repair business, antique
19 aircraft repair business, and the other gentleman whose
20 name escapes me who flies the Royal Canadian Air Force
21 flag on his front lawn and has the little airstrip
22 almost next to Mr. Martin and Mr. Pompa's house with
23 his little Venice out front and the other uses. The
24 lady who paints dogs, the riding stables to the north
25 at the southeast corner of Britannia sideroad and First



1 Line and the farms in the area, particularly -- and I
2 have forgotten his name, but the gentleman or the lady
3 who showed us all the trophies they had won. I have a
4 reasonable appreciation of the existing situation in
5 that area.

6 Q. I recall now that one of the
7 exhibits, and you may remember that this was marked
8 during your evidence before the Board as Exhibit N-
9 597, a photocopy of the exhibit list with various
10 documents checked off. Could you look at that and tell
11 me if any of the documents produced by the Region's
12 consultants or other parties which you reviewed
13 pertained to Site D?

14 A. Yes.

15 Q. You don't have to list them all.

16 A. There are a number of them and the
17 early reports, it was considering all potential sites
18 and the Region was considering a number of potential
19 sites and then in the later parts of the study, they
20 narrowed it down, narrowed the overall areas that might
21 be suitable down to sites and then the final
22 comparative analysis, and I have read a number of
23 reports which are here which deal with both Site D and
24 Site F, or Site D, Site F and other sites.

25 Q. I am sorry, I interrupted you.



1 A. I briefly reviewed the Parkway
2 Belt West Plan to see if it applies and it doesn't, and
3 the planning area is over to the east and it doesn't
4 affect Site D, except insofar as the area is part of an
5 agricultural area which is clearly in the Parkway Belt
6 West Plan it is considered an appropriate use in the
7 area, so if it is part of an overall area, the removal
8 of part of it has some affect on that, on the overall
9 agricultural community.

10 I looked at the Regional plan and its
11 policies with respect to the protection of agricultural
12 land and the agricultural fabric of that part of the
13 area, of the regional planning area, and I briefly
14 reviewed the Milton Official Plan and not specifically
15 to see how, if one had to amend it, but just to note
16 that the Tremaine Britannia site is a special
17 designation, a very specific way of designating it in a
18 sense to say that a site is permitted in Milton at this
19 site and the by-law says the same thing.

20 I looked at the Ministry of Agriculture
21 and Food Land Guidelines, specifically the sections
22 which I noted this morning for the Board, 3.13, 3.14,
23 3.14(3) and 3.14(4), all of which I believe definitely
24 apply to this and they clearly indicate that the area
25 should be preserved if there are alternatives, and I



1 also looked at the proposed policies and specifically
2 the agricultural policy draft by the Ministry and
3 clearly 3.1.1 and 3.1.4. apply.

4 Then I briefly looked at the criteria

5 I outlined this morning by which one goes into further
6 detail in respect of the Food Land Guidelines, the
7 criteria used by the Ministry of Agriculture and Food.

8 There are the MOE guidelines and again
9 using them in the sense that if one is looking at
10 sensitive land uses and clearly the farms and houses
11 around there are sensitive land uses, how the Ministry
12 thinks any proposal for those uses should be reviewed
13 if there is a landfill site and the reverse is true,
14 should one put a landfill site where there are existing
15 sensitive land uses, and that is specifically policy
16 07-03-03, or the page is 03, so it is 07-03, Section
17 2.1 where it lists the uses one should look at and
18 clearly in my mind it poses a problem, a serious
19 problem which offends the guidelines in that sense.

20 As I said, I looked at the existing land
21 use on the site and the surrounding sites and noted
22 there are no public uses in the area, so in fact it is
23 a public use proposed in the middle of an area that has
24 none. I certainly looked at the views and the effect
25 that it would have and it is very dramatic I think as



1 opposed to as Site F, where I don't think the effect of
2 a landfill is dramatic. It certainly would be because
3 one can see very clearly, you can see or at least I
4 could see and my eyes aren't that good at my age, but
5 from the concession road west of the First Line, one
6 can see cars moving on Highway 25 and the landscape is
7 virtually dead flat and the views are very long and
8 from Highway 25 one can clearly see the escarpment
9 outline because it is a flat, good agricultural area,
10 which means most of the trees have been removed. There
11 are bushes scattered around which give pleasant relief
12 to the flatness of the countryside, but there is no
13 question at all that the views are very extensive in
14 every direction except to the east of Highway 25. There
15 is a fairly substantial bush and also the land becomes
16 more undulating to the east, so the views are less
17 restricted and they are only about one concession to
18 the east and to the north and south the land falls off
19 a bit and also there is more bush there. To the north
20 they are also less extensive, but to the people in the
21 immediate surrounding, their view is a big wide open
22 area and presumably, and having dealt with clients who
23 buy properties in order to build houses and having done
24 so for many years, some people like to be in a very
25 open area and some people like to be and are prepared



1 to pay a great deal of money to be in a secluded area.
2 These people on Waterdown Road presumably, from my
3 experience, would have bought these houses because they
4 like to be snuggled into a little valley in among the
5 thick trees, and other people like to have an expansive
6 view and here one must presume that one of the reasons
7 they bought was because they have a colossal and very
8 beautiful view and when the sun comes up in the
9 morning, those people on First Line, it's terrific or
10 it must be because it comes zooming up above the
11 landscape and it's a very impression, dramatic series
12 of views and the opposite is true when the sun goes
13 down in the evening for those on Highway 25.

14 The landfill would be a dramatic
15 interruption of those views.

16 I looked at transportation and it is
17 clear to me that the Giffels reports are very clear
18 that there is oodles -- there is a lot of capacity on
19 Highway 25 to take the trucks going to the landfill
20 site, but I don't think or I have not thought, although
21 it was impressed on me by the Ministry of Agriculture
22 and it has been in many areas in other cases, but I
23 haven't thought seriously about a question raised by
24 the agricultural community, the question of a conflict
25 between large-scale agricultural equipment and highway



1 traffic. I haven't given that much attention and I
2 have thought a great deal about it and looked at some
3 of the other things where we have deliberately taken
4 this into account and I think that their fears are very
5 real. I went back and stood outside the site to see
6 how one could really deal with this and it's a
7 difficult problem because there are bits of substantial
8 movements, and I have seen them and I haven't counted
9 them and no one else has, as far as I know, apart from
10 the farmers, but that is a problem and not in terms of
11 capacity because the highway clearly can take that, but
12 in terms of the manoeuvrability of those vehicles and
13 their turning movements and the trucks, and the very
14 tight frequencies they have. So, capacity is not a
15 problem but interference in other senses is a not a
16 problem, but there certainly is a potential for
17 conflict with agricultural machinery.

18 I looked at the farms and my experience
19 in dealing in official plan amendments and official
20 plans in rural areas, and I am quite satisfied that
21 some of the concerns raised by the farmers are very
22 important. The question, as I said this morning, and
23 it is inevitable there will be some litter distributed
24 over the landscape from a landfill facility however
25 good the housekeeping is, and as I have said, I think



1 the Region's housekeeping has been very good at the
2 present site, but inevitably there is some and the
3 farmers' fears of ingestion of plastic by a cow, which
4 could cause its death, the farmers' fears that their
5 water supply, which is entirely by wells, might be
6 affected is a very serious psychological issue and
7 conceivably an actual practical problem, because there
8 may be, with the best engineering in the world, some
9 run-off from the top of that site onto adjacent land
10 into the little streams which wander around the area
11 and perhaps into the drinking water used by the cows.
12 While the effect on pets and so on in an area may be
13 relatively small and maybe a pet would get sick and
14 conceivably die, but on milk cows, if their licence is
15 in fact removed, then clunk, and it's checked every
16 other day, that's a serious problem and it's a measure
17 of part of the disruption, psychological or otherwise
18 or practical in the farming community.

19 There are essentially no community
20 facilities in the area, but there is a real community
21 fabric, which I think is important and is in sharp
22 distinction with Site F, because farmers do, from my
23 experience of working in a lot of agricultural areas,
24 through the east -- through from the east coast through
25 to Alberta, and while it varies in degree, there is a



1 very tight feeling of community and that was very well
2 expressed by the farmers which you heard that they club
3 together and share machinery and look after each other
4 when there is a problem or an illness or a need for
5 help of all sorts and to disrupt that community, and
6 unquestionably it would have some effect, but that is
7 highly undesirable where one can avoid it and whereas
8 the Food Land Guidelines say there is clearly an
9 alternative that is preferable. My conclusion from
10 this is that the site would not comply with many --
11 almost all the Ministry of Agriculture and Food
12 Guidelines, it would not comply with the guidelines of
13 the Ministry of the Environment and it would be, it
14 would have an impingement upon all of the social
15 factors one takes into account and it is a foreign land
16 use in the middle of an agricultural area and while it
17 may not in capacity terms and specific turning
18 movements of the trucks into the site be a problem, it
19 could very well be a real problem to the farmers,
20 bearing in mind that the Region or anyone else can't
21 regulate to the nth degree the truckers who come down,
22 because truckers are truckers. There could be real
23 conflict there and since there is an alternative, which
24 in my view is virtually impeccable in its credentials,
25 Site D is clearly not preferred and Site F is preferred



1 and I think that this is borne out by the evidence that
2 I heard from Mr. Walker who recommended it as the
3 preferred site, as the head of his team and Mr. Stagl
4 and Mr. Kentridge, and I heard part of his evidence and
5 I read the notes taken by one of my colleagues when I
6 was not able to be here, and Mr. Kauffman and the
7 residents. So with all of those things favouring it
8 and all that evidence favouring Site F and raising all
9 the problems I see from my brief review of Site D, I
10 have to come to the conclusion that it is virtually an
11 immaculate site, an excellent site which fits every
12 objective and must be preferred over Site D from a
13 planning point of view.

14 Q. Would you attempt to summarize in
15 a comparative way the issues that you thought relevant
16 to these two sites in general planning terms?

17 A. Yes. I went through all the
18 issues and they are set out, if I can remember the
19 page, and I thought I had noted the page in the report
20 where they are set out.

21 Q. Are you referring to your witness
22 statement?

23 A. My witness statement, yes.

24 Q. Perhaps you could identify for the
25 Board where they are, as I don't think we need to go



1 through it.

2 A. No. The conclusions are set out
3 on page 8.

4 Q. Exhibit N-588?

5 A. Yes, my witness statement, where I
6 have set out the general conclusions and I outlined the
7 specific facts I looked at.

8 Q. Did you also prepare a comparison
9 chart outlining your comparative view of the two sites
10 in land use terms?

11 A. I did.

12 Q. I am showing you a document
13 entitled Comparison of Land Use Factors at Sites D and
14 F. Is that the summary chart you prepared?

15 A. That is it.

16 MS. CRONK: I would ask that that be the
17 next exhibit.

18 MR. LANCASTER: Thank you. This will be
19 N-607.

20 --- EXHIBIT NO. N-607: Document entitled
21 Comparison of Land Use
Factors at Sites D and F.

22 MS. CRONK: 607 or 606.

23 MR. LANCASTER: I have the summary sheet
24 as 606.

25 MR. LEITCH: 606 was the Waste Disposal



1 Sites.

2 MS. CRONK: I beg your pardon, sir.

3 Q. Could you outline for the Board
4 please what you have dealt with in the chart generally
5 and then take the Board please through the various
6 items you have set out on the chart?

7 A. Mr. Chairman, they are related to
8 the other factors I spoke about and they are the sort
9 of conclusions one draws from those other factors. The
10 first is a comparison between Site D and Site F in
11 interference with established land uses, does it
12 interfere with established land uses. In the case of
13 Site D, clearly it does and Site F, it certainly
14 doesn't interfere with the existing land uses. That is
15 on the site.

16 No. 2, is it dissimilar to the existing
17 and historical land uses in the area. For Site D,
18 clearly it is and for Site F, clearly it is not.

19 Displacement of residents on site, Site
20 D does and Site F doesn't. In fact, at Site F the
21 owners would be happy to see the site used for landfill
22 purposes.

23 No. 4 is would there be any disruption
24 to adjacent residents. In the case of Site D, clearly
25 there would be and in the case of Site F, clearly there



1 isn't any.

2 No. 5 is disruption of the quiet
3 enjoyment of nearby properties, and this includes in my
4 view visual, which is an important element as well as
5 traffic, noise, dust litter and so on and so on. While
6 there may not be any specific immediate scientific
7 proof that there will be a problem, the disruption is
8 nevertheless there as I think we heard, both in
9 psychological and other terms. In Site D, there
10 clearly would be some disruption, there would be
11 disruption of the quiet enjoyment, and at Site F I have
12 put qualified there because some people think that the
13 equestrian facilities might be affected and the people
14 to the north would in fact see the site, and others
15 would, but I don't believe it is more than qualified.

16 No. 6 is interference with the
17 established social fabric. Clearly as we have heard,
18 and in my view, that is correct, there would be
19 interference with it at Site D and there wouldn't be at
20 F because there isn't a social fabric around there.

21 No. 7 is the potential for negative
22 effect on existing transportation systems. I have put
23 yes, and that perhaps might have been qualified, but
24 there certainly is a potential for it as we have heard
25 from the residents and there certainly isn't in the



1 case of Site F.

2 Interference with the natural
3 environment, topography, which I spent some time on in
4 connection with Site F. There will definitely in Site
5 D be a substantial change in the topography and in Site
6 F there will be a change and I have used the word
7 qualified, but essentially there isn't any change.

8 Then flora and fauna; at Site D the
9 experts, and I have not investigated the matter, but I
10 have read the reports but the flora and fauna aren't
11 affected on Site D and there is some effect at Site F
12 in respect to vegetation, but not in the case of fauna.

13 No. 9 is the disruption of the
14 groundwater regime, and yes there will be a change, but
15 that doesn't mean to say it is a deleterious change,
16 and in the surface water regime there will also be a
17 change in both of them, disruption of them.

18 Ten is the potential for disruption to
19 ground and surface water users. It is clearly yes in
20 the case of Site D which depends on ground and surface
21 water use, because they have no other and aren't likely
22 to get any, and their use of it is a fragile use, if I
23 may use that word. In the case of Site F, clearly
24 there is no effect, and as Mr. Trow said in his
25 concluding comments in the comparative analysis....



1 Q. Mr. Who?

2 A. Mr. Trow.

3 Q. Do you mean Trow Consultants?

4 A. I am sorry, Trow Consultants.

5 Q. Like my ESP?

6 A. Yes, Trow Consultants.

7 MR. LEDERER: I don't know if Ms. Cronk
8 has ESP, but I can tell the Board there is a Mr. Trow.

9 THE WITNESS: I have never met him but
10 we have worked with them for years.

11 On page -- in H-14, Mr. Chairman, pages
12 2 and 3 of the Trow/Hydrology Consultants Appendix A,
13 it is clear from everything said there, particularly
14 under Site F, advantages, there are no downgradient
15 groundwater uses and the groundwater quality at the
16 site is very poor and essentially non-potable and
17 municipal water supplies are available and there are no
18 surface water users downstream of the site, there is no
19 foreseeable future use for groundwater or surface water
20 resources, the groundwater flow system is nearly
21 unidirectional and control systems would be easier and
22 cheaper to install if they were required and the sewer
23 is available near the site. It is clear in any
24 comparison that the effect, yes there is an effect at D
25 and there isn't any at F.



1 Q. Those factors you have listed in
2 the summary chart under compatibility factors?

3 A. That is correct.

4 Q. In your opinion, do each of those
5 go to the issue of land use compatibility as you have
6 defined the term?

7 A. They do.

8 Q. With respect to items 9 and 10,
9 you again used the phrase a moment ago you used this
10 morning before lunch. You spoke of a deleterious
11 effect?

12 A. Yes.

13 Q. I can look it up in the
14 dictionary, but I would like to know what you mean by
15 that?

16 A. Essentially that no person is
17 going to get hurt, and I think that that is clear from
18 what Trow has said, nobody could possibly get hurt,
19 because nobody uses the water and they all have
20 satisfactory systems elsewhere.

21 In the case of Site D, that is not so;
22 they are dependent on water in that area and while the
23 safety may be considered to be virtually perfect, it
24 isn't, and I guess no one can guarantee anything, but
25 even if one can't guarantee at Site F, no person will



1 get hurt as there is nobody using that water, whereas
2 at Site D it is problematic. Does that make it clear?

3 Q. It does for me.

4 The balance of the summary chart?

5 A. The second part, Part B, and this
6 excludes planning approvals, because, as I have said,
7 while I briefly reviewed them I haven't done enough
8 detailed work on that in order to be specific.

9 Q. With regard to which site?

10 A. Site D. Of course I have on Site
11 F, but I have just used the Ministry of the Environment
12 Land Use Compatibility Guidelines, and I believe that
13 Site D does not conform to that policy whereas Site F
14 does.

15 Q. Why do you say Site D does not
16 conform to the Ministry of the Environment Land Use
17 Compatibility Guidelines?

18 A. There are sensitive uses
19 surrounding it and it would have an effect on them and
20 the Ministry's policy is to try and separate land uses
21 that are sensitive to each other and to put that
22 landfill site in the middle of uses which are clearly
23 sensitive -- it would therefore not conform to the
24 Ministry of the Environment guidelines, the base of
25 them.



1 I admit, of course, that there are
2 proposed to be berms and landscaping of the berms and
3 all the other measures which have some mitigating
4 effect, but nevertheless where one has a parcel of land
5 like F, which doesn't offend the guidelines, then
6 clearly that is preferred over Site D.

7 It's the same with the Mineral Aggregate
8 Resources Policy statement. It is clear that both
9 sites conform to that, the letter in the case of Site F
10 where the Ministry deems this to be more appropriate
11 and a more important use and in the case of Site D, as
12 far as any of the literature I have read or reports I
13 have read, there is no resource there, so it conforms.

14 Q. Let me understand. With respect to
15 the Mineral Aggregate Resources Policy statement in the
16 case of Site D, is it applicable at all?

17 A. I don't think so and that is what
18 I said. By reading the reports, nobody has mentioned
19 there is, and as far as I know there isn't a resource
20 there and therefore it doesn't comply and in the case
21 of Site F, it clearly applies, because there is a
22 resource there, but the Ministry has set conditions.

23 Q. Thank you.

24 A. Thirdly, the Ministry of
25 Agriculture policies, the Food Land Guidelines and Food



1 Land Preservation Statement; clearly as I outlined a
2 minute ago, Site D is not in conformity with that and
3 Site F is and I have quoted the sections to which I
4 have had regard.

5 Lastly, Transport Canada policy, Land
6 Use in the Vicinity of Airports, clearly to the policy
7 statement and whether one should have regard to it,
8 Site D does not conform as it is within five miles of
9 an airport and Site F is not and therefore it does
10 clearly conform with the policies.

11 Q. Mr. Bacon, I have one final
12 question. You have been an observer, if you will, of
13 the environmental assessment study process that the
14 Region has carried out over the last six years?

15 A. Yes.

16 Q. You told the Board you reviewed a
17 number of the documents prepared by the Region and by
18 its consultants. As an experienced planner and given
19 your familiarity and the work you have done on Site F,
20 what is your opinion as to the adequacy of the
21 environmental assessment process the Region followed?

22 A. I think the process, given the way
23 the Act is set out, has been a pretty reasonable one.
24 I find no fault with it because I think it has done
25 everything the Act requires. I think the problem is



1 that the Act, and I don't know any other part of the
2 world and I operate under the Act in Florida out of our
3 Florida office, and I have worked in other parts of the
4 world, but it is very difficult to define all these
5 factors, but I would hope that the Act will be
6 tightened so it will be clearer precisely what has to
7 be done. The time factor because of this difficulty of
8 defining what has to be done, has been enormous in this
9 case and of course there are colossal cost implications
10 for everybody. It has meant that a number of steps
11 have been done in a preliminary way and done in a more
12 detailed way and in some cases done again in greater
13 detail. That is inevitable when you are taking a huge
14 area and trying to get from areas to sites and from
15 sites to a preferred site. It has also involved a
16 huge amount of public input, which can be a good thing
17 and it can also be a bad thing, in that people, if they
18 are subjected to it for too long, get fed up with the
19 whole process and then you don't get some of the input
20 you might want. So, really I think it has been -- it
21 has been a fair process. I would hope in the future we
22 would manage to make it a better process that will not
23 cause municipalities, many of whom are getting into a
24 crisis state almost and having to go through the long
25 drawn-out process to ensure that sites are safe and



1 there is the least harm to everybody in terms of the
2 other aspects, other than hydrogeology, and I believe
3 it has become too complex and it has been held up for
4 seven years and the Region has been held up to a
5 colossal extent in finding a site, and so they are
6 always on tenterhooks and they have had to extend the
7 current site twice in order to deal with the problems
8 they have got.

9 I believe that the move of the
10 government to establish your Board, the Consolidated
11 Hearings Board, was a tremendous step forward and in
12 that sense, the process has been greatly helped in that
13 one can have all the hearings at once. We had a real
14 problem, as I explained earlier, when we made the first
15 application for an amendment to the Parkway Belt West
16 Plan, should we make an application for an amendment to
17 the regional plan, to the Burlington plan, the
18 Burlington zoning by-law all at the same time and we
19 concluded we would have to, because to go through these
20 ad seriatim would have taken forever and also because
21 nobody was likely to approve if an amendment to the
22 plan was required or an amendment to the regulation
23 under the Act, until they thought it was worth doing
24 that, because the site was safe and how did we separate
25 all these things, and putting them together in one



1 package is clearly desirable and having it heard before
2 a Board such as yours, which is a great step forward.
3 While I think the process is being as fair as it
4 possibly can be, and I have no criticism of the
5 consultants and their expertise and so on, I believe we
6 have to find a way to make it more expeditious from
7 everybody's point of view, the proponent, and there
8 must be a way of doing it faster so they can get
9 results and also from the property owner's point of
10 view, who as one or two of the residents have said, and
11 certainly from my own experience, it hangs over a cloud
12 for them for years and is a terrible business.
13 Psychologically it is really traumatic.

14 Thirdly is from the general ratepayers'
15 point of view, and having been president of a
16 ratepayers association for ten years, I know what it is
17 like constantly being vigilant, has the report come out
18 and do we have to go to Council next week and so on.
19 That's hard work. If we can overcome those problems,
20 then clearly the process will be better, but I have no
21 criticism of the way it has been done, certainly not by
22 the Region.

23 MS. CRONK: Thank you very much. Mr.
24 Chairman, those are all my questions.

25 MR. LANCASTER: Mr. Leitch?



1 MR. LEITCH: I have no questions, Mr.
2 Chairman.

3 MR. LANCASTER: Mr. Lederer, have you
4 questions?

5 MR. LEDERER: I do and I am happy to say
6 I have very few.

7 CROSS-EXAMINATION BY MR. LEDERER:

8 Q. Mr. Bacon, nobody else will
9 believe me when I say this, but I actually expect to be
10 quite short. If we can go right back to the beginning
11 of the questions which Ms. Cronk asked you, as I
12 understand it, looking at your training, all of your
13 training, in fact going back to 1953, has been in the
14 area of land use planning?

15 A. Yes.

16 Q. As I understand it, you have spent
17 your entire professional life working in that
18 discipline?

19 A. Yes, if you call architecture
20 carrying through land use and overall planning into
21 architecture, yes I have done some design of buildings
22 per se and construction thereof or have supervised it.

23 Q. Can we agree the largest majority
24 of your time has been dealing with how to use land?

25 A. Yes.



1 Q. The report which you prepared for
2 this hearing and which has been exhibited here is
3 Exhibit 596 -- sorry, 586, N-586, which we agree is a
4 land use planning report?

5 A. Yes.

6 Q. In fact, just to confirm that or
7 to underscore it, if you go to page 1 of your report,
8 the opening paragraph, what you have written there:

9 "This Report outlines the history of the
10 applications for and the proposal by
11 National Sewer Pipe Limited.... to
12 utilize a portion of its land in the
13 City of Burlington for a sanitary
14 landfill facility. It also sets out the
15 results of the evaluation by The Proctor
16 & Redfern Group....of the suitability of
17 the land, in a land use planning
18 context, for use as a landfill site."

19 It is the land use planning context we
20 are concerned with when we review this report and
21 consider your evidence?

22 A. Yes.

23 Q. Can we agree as well, sir, that
24 when this Board comes to consider the matter, it is
25 going to have to look at matters other than merely land



1 use planning. Let me give you an example, and one you
2 have referred to, public health and safety?

3 A. Yes.

4 Q. You indicated in the course of
5 responding to questions by my friend Ms. Cronk, that
6 public health and safety was in a sense the first level
7 of importance and that was the first thing you had to
8 look at and in a sense it might override all other
9 concerns?

10 A. I said it would override all other
11 concerns.

12 Q. Can we agree that what that
13 demonstrates is that this Board will have to consider
14 factors beyond land use planning, and that is an
15 example?

16 A. I have a slightly broader view of
17 land use planning. I think public health and safety
18 and social factors are part of planning considerations
19 and the most important of which is safety, certainly in
20 this context the hydrogeological...

21 Q. In the context of an environmental
22 assessment, can we agree the Board will have to
23 consider expertise in this area beyond your own?

24 A. Oh yes, no question.

25 Q. In doing that, it may be that the



1 Board will determine, and this is purely hypothetical,
2 but the Board may determine that despite the concerns
3 you have in a physical planning sense about the use of
4 the site, the Board may nonetheless determine that it
5 prefers to go to some other location?

6 A. Yes, it may.

7 Q. In that context, while it may not
8 be the best decision from a physical land use planning
9 perspective, it may nonetheless be the best or the only
10 result in an overall context?

11 A. Could you repeat that?

12 Q. Certainly.

13 In a situation where you have to balance
14 these others areas of expertise, or these areas of
15 expertise beyond your own, and were those areas of
16 expertise take you to another conclusion, it may be,
17 despite the fact that the conclusion is not the best
18 from a physical land use planning point of view, it
19 nonetheless may be the best decision in an overall
20 context?

21 A. That is a hypothesis?

22 Q. Absolutely and purely in the
23 abstract.

24 A. We are taking it entirely in the
25 abstract and it may be the best decision, I have no way



1 of judging that.

2 Q. Precisely, and that is what we ask
3 the Board to do?

4 A. Yes.

5 Q. Now, can we also agree that when
6 you come to analyze land use planning in this narrow
7 physical context we are talking about, you also have to
8 carry out a kind of balancing of the various factors
9 and land use considerations?

10 A. I am not balancing it in a narrow
11 context. If you want to exclude certain factors, I
12 would have to know what they are to be able to respond
13 to your question.

14 Q. To give you an example from
15 answers you gave to Ms. Cronk, you indicated to her
16 that you had reviewed the impact on the biophysical
17 features of Site F?

18 A. Yes.

19 Q. And determined that overall, while
20 there was an impact there, you felt it wasn't as
21 serious as other impacts or it was something that could
22 be over-balanced by other considerations. Do you recall
23 saying that?

24 A. Yes. I start from the premise
25 that people and the safety of people are the most



1 important factors, as part of planning, which I think
2 takes all of these into account.

3 Q. When you tell me you consider
4 biophysical matters not to be as significant, are we
5 only talking about safety features or are we talking
6 about it not being a significant as other matters?

7 A. Not as significant as other
8 matters because they start from the premise that we
9 have an urban problem generated by urbanization, and
10 the waste people produce and one must deal with that in
11 the safest possible way and essentially relating to
12 people. Biophysical factors are important and they
13 should not be ignored, but I don't believe they are as
14 important.

15 Q. My point is that when you come to
16 undertake this sort of analysis, you do determine the
17 relative importance of the factors or features you are
18 looking at?

19 A. Yes.

20 Q. You carry out that kind of
21 balancing?

22 A. Yes.

23 Q. I think you agreed with me a few
24 moments ago that taking all of this balancing into
25 account, again we might be led to a site purely in the



1 abstract or be led to a site which was not the best
2 from a strictly land use planning point of view?

3 A. From factors other than health,
4 safety or whatever factors are excluded, that's
5 possible but I can't really answer.

6 Q. In the abstract it could happen
7 and that's all I am suggesting?

8 A. It's possible.

9 Q. Can we also agree that all of that
10 is perceived by the planning policies which apply in
11 this area, it is perceived first of all by the Regional
12 Official Plan in Section D3.9 which talks about the
13 possibility of going -- if you need a moment to look it
14 up, it is H-87 on page 70.

15 A. D3.9. Yes?

16 Q. Perhaps we had better read it:
17 "Locate sanitary landfills where
18 feasible on lands less suited to other
19 purposes but recognizing that the nature
20 of the operation of landfills including
21 the need to protect ground and surface
22 water may require locations for
23 landfills which according to other
24 policies of this plan may be best suited
25 for other purposes."



1 Can we agree that that perceives the
2 possibility of having to go somewhere that strictly
3 from a land use point of view is not the best?

4 A. Yes, that is possible. At least
5 that is what the policy says.

6 Q. You also referred to the Food Land
7 Guidelines, and would you agree with me, and again if
8 you need an opportunity to look at these, please do,
9 but if you refer to paragraph 3.13 and 3.14 of those
10 guidelines, there is there a program for study of the
11 justification of developing lands which are of a high
12 priority from an agricultural point of view?

13 A. Certainly from looking at it, but
14 it's very, very clear to me that where high capability
15 agricultural lands have been identified, the use of
16 these lands for productive agricultural purposes must,
17 and that is mandatory, be given priority and here we
18 have a black and white situation.

19 Q. We are only dealing in the
20 abstract.

21 A. I see.

22 Q. Having conducted the studies
23 outlined there, would you agree that that policy
24 perceives the possibility of despite its priorities,
25 having to develop on agricultural land?



1 A. Oh yes, yes.

2 Q. The same thing could be said for
3 the Mineral Aggregate Resource Policies?

4 A. That is true too, yes.

5 Q. You have said to Ms Cronk and now
6 to me that land use planners do look at other things
7 beyond strictly the use of land and you referred to
8 aspects of social planning; do you recall all that?

9 A. Yes.

10 Q. I take it that insofar as it is
11 relevant here, social planning really refers to matters
12 which are disruptive of either people on these sites or
13 uses of the properties surrounding these sites?

14 A. That is an important factor.

15 Q. You see when you raised this with
16 Ms. Cronk, you talked about social planning in terms of
17 facilities for senior citizens and health care
18 facilities, but that is not relevant particularly to
19 this discussion?

20 A. No, of course not.

21 Q. When we are talking about it here,
22 we are talking about the disruptive factors; would you
23 agree?

24 A. Disruptive of a whole series of
25 things, yes.



1. Absolutely.

2 A. Yes.

3 Q. I was interested in what it was
4 you would look at to determine that disruption, whether
5 it existed or the degree of disruption, and I presume
6 we are talking about things like noise for one?

7 A. Yes, noise, dust, odour, social
8 fabric, community facilities, all the things the
9 Region's consultants have looked at.

10 Q. Just for the moment, looking at
11 your studies, the substantive studies, surely social
12 fabric is something that can be disrupted by noise or
13 odour or placement of the landfill, isn't that right?
14 It is different from noise or odour.

15 A. Yes. It does.

16 Q. I am interested in the
17 considerations you have examined to consider social
18 planning and I presume we are talking again about
19 things like noise, odour, visual, traffic, that kind of
20 thing?

21 A. Yes.

22 Q. You have been very candid in
23 talking to Ms. Cronk and indicating that you do not
24 have particular expertise in those areas?

25 A. In a scientific sense, no.



1 Q. You have therefore relied upon the
2 work of others to a degree in the work you have
3 undertaken here?

4 A. I have had regard to the reports
5 by the Region's "experts".

6 Q. You are not suggesting they are
7 not experts by your use of the words experts?

8 A. No, I am not suggesting they
9 aren't experts, but since for instance the consultants
10 who looked at the question of disposing of particulate
11 matter, highly scientific, and I don't doubt they are
12 right when they say it is hard to get beyond the
13 boundaries and if it does it will be acceptable to MOE,
14 but when one is thinking in social planning terms, one
15 thinks not just in scientific terms but one must have
16 regard to people's perception of what the problem is
17 and whether they think they will be upset by it, which
18 is an important factor, and we have certainly heard
19 that from all the people in the agricultural area, or a
20 number of them, and also even if it is not toxic in
21 terms of energy from waste or whatever, whether in fact
22 there is going to be some nuisance to people which is
23 maybe small but a significant thing to consider.

24 Q. The question I asked you was did
25 you rely on the work of others, and I presume the



1 answer is yes?

2 A. In large part, but not totally
3 because I did in fact walk around, and I have certainly
4 been on the NSP site on a number of occasions and I
5 have walked around and parked around Site D.

6 Q. What I take it we have from your
7 evidence in answer to Ms. Cronk in respect of your
8 analysis of Site F is the work of expert in certain
9 areas and some of them employed by your firm Proctor &
10 Redfern?

11 A. Yes.

12 Q. The Region's reports, which you
13 have reviewed?

14 A. Yes.

15 Q. Your own observations from having
16 walked around the site?

17 A. Yes.

18 Q. Based on that you have drawn
19 certain conclusions, if I understand your evidence
20 correctly?

21 A. Yes.

22 Q. You have been able to make a
23 determination as to the compatibility of the use of
24 this land for landfill in regard to the other uses
25 presently surrounding the site?



- 1 A. Are we talking about Site F?
- 2 Q. Yes.
- 3 A. Yes.
- 4 Q. Your determination that Site F, or
- 5 using Site F for landfill would be compatible with the
- 6 surrounding uses?
- 7 A. Yes.
- 8 Q. Can we agree, sir, that
- 9 compatibility is at a certain level, a matter of degree
- 10 and some things are more compatible than others?
- 11 A. Yes.
- 12 Q. I take it from all of the evidence
- 13 you have put together here with respect to Site F that
- 14 you have been able to determine in some detail your
- 15 belief that this site is not only compatible but is in
- 16 fact close to the perfect site, you said, and I thought
- 17 you said you would give it a ranking of 9.99 and said
- 18 it was almost unique?
- 19 A. Yes.
- 20 Q. With all that detail you have been
- 21 able to tell us there is a high degree of
- 22 compatibility, in effect?
- 23 A. That is my belief, yes.
- 24 Q. At Site D, as I understand it, you
- 25 haven't done the same kind of analysis?



1 A. No.

2 Q. All right.

3 A. Not over as long a time and not in
4 as much detail, but I have read the consultants'
5 reports to the Region and I have tested the
6 agricultural guidelines, et cetera.

7 Q. Would it be fair to say that when
8 we refer to N-607 and we look at the word "Yes" in
9 respect of the compatibility or incompatibility of Site
10 D, that this is a word which doesn't give us any sense
11 of the degree of compatibility?

12 A. Correct.

13 Q. Can we agree that you are not in
14 the same position at Site D as you were with Site F to
15 give us any degree of compatibility, you simply haven't
16 done the same detail of work?

17 A. I haven't done the same detail of
18 work and in some cases was not able to graduate it as
19 clearly as I can with Site F, correct.

20 Q. Can we agree that when we come to
21 examine this chart, that is something of a limiting
22 feature. We know you have done a tremendous amount of
23 detailed work with respect to Site F, but we are not as
24 certain about the range of compatibility or where Site
25 D fits in in the range of compatibility; is that fair?



1 A. In some instances, yes.

2 Q. If we could just pick some
3 examples then, and perhaps we could take a moment to
4 look at this chart. Can I take it that in doing this
5 kind of work, going back to where we were a few moments
6 ago, and in understanding the relative positions of
7 these sites, you would have to undertake the kind of
8 balancing we were talking about before and you would
9 balance these various factors and they don't act in a
10 mutually exclusive fashion?

11 A. All the factors here?

12 Q. Yes.

13 A. Or all the factors overall?

14 Q. All the factors here.

15 A. All the factors here?

16 Q. Yes.

17 A. They don't, they all relate to
18 each other.

19 Q. If we are going to undertake a
20 balancing of these factors, can you agree that it would
21 be helpful to understand the degree of difference
22 between the sites with respect to each of these
23 factors?

24 A. The degree of difference between
25 Site D and Site F?



1 Q. Yes.

2 A. Yes, it might be, but where the
3 difference is so, in my view, overwhelming, and none of
4 them are very close, it may be helpful to a degree, but
5 less helpful than say there were two sites that were
6 very close together, because then you would have to get
7 into the fine tuning.

8 Q. We agree it would be helpful and
9 it would be a more detailed study and we would have a
10 clearer understanding of the distinction if we had
11 degrees here? I am not being critical, but I am
12 suggesting it is a limiting feature to this work.

13 A. It might in some cases be helpful,
14 yes.

15 Q. I wanted to understand a bit more
16 clearly how this works. Could we look at Nos. 4, 5 and
17 6 for a moment. When I first read this, I must say I
18 didn't understand the difference between 4 and 5, but I
19 think I understand it now. Four relates to people who
20 actually live adjacent to the site and 5 are those
21 properties which are in use but nobody lives on them;
22 is that the distinction?

23 A. Right. And people who do live on
24 them, but it's a wider area.

25 Q. No. 6 is interference with



1 established social fabric. Isn't the social fabric a
2 function of who lives there and how they use the
3 property?

4 A. It's the community as opposed to
5 the individual.

6 Q. You are taking 4 and 5 and joining
7 them together, as it were?

8 A. Not really because the nearby may
9 be quite a way away because the agricultural community
10 spreads over several concessions. We heard the farmers
11 who live in one area and rent property in another and
12 they are going down the roads in the area and therefore
13 they are part of that community and there was one
14 farmer who I think rented several concessions away and
15 indeed uses his father's equipment or his father-in-
16 law's equipment and brings it down. That is what the
17 Ministry of Agriculture talks about as being the
18 agricultural community. So the social fabric is the
19 social fabric of the agricultural community plus those
20 who live in the rural area.

21 Q. It takes us beyond people who
22 merely live in proximity to the site?

23 A. It does.

24 Q. I was wondering what the
25 considerations were that went into these particular



1 compatibility factors. I presume again that among the
2 things you looked at would be noise, and that would be
3 one thing that would have an impact upon these three?

4 A. Noise, dust, odour, would all have
5 an impact.

6 Q. Dust would have an impact?

7 A. Yes.

8 Q. Odour?

9 A. Yes.

10 Q. The visual factor?

11 A. Yes.

12 Q. I see traffic you have broken out
13 as a separate consideration, 7?

14 A. Because that is more, if I can put
15 it this way, a more scientific thing because it is easy
16 to count cars and trucks.

17 Q. Hydrogeology has been broken out
18 because we find it in 9 and 10?

19 A. Yes.

20 Q. Looking at the things which I
21 understand are in 4, 5 and 6, noise, dust, odour and
22 visual, I take it that in doing this work you relied
23 upon the Region's reports here?

24 A. Yes, essentially, and comments
25 made by the farmers and certainly in terms of visual,



1 of their perception of the area, and certainly what I
2 observed on the site.

3 Q. I don't want to spend a lot of
4 time dealing with perception, but you are not
5 suggesting that perception is interchangeable with a
6 scientifically-demonstrated fact? If I say I perceive
7 -- here is a study which shows there will be traffic
8 congestion. That's not the same as saying I'm afraid
9 there will be traffic congestion, is there?

10 A. Well, this is a complicated
11 subject to get into. To an extent it is. Traffic
12 congestion is to an extent what people observe through
13 levels A to E, and when you get to F on the road
14 system, then you have in fact got a failure of the road
15 system, temporarily and whether it is ten minutes or so
16 long a jam, and that depends upon what the community is
17 prepared to pay for, because it would be ridiculous to
18 ensure that the Don Valley Parkway or 401 flowed at
19 level E, twenty-four a day. We couldn't afford to do it
20 and from a social point of view, (a), cost, and, (b),
21 just in guesstimating the neighbourhoods on either
22 side, it wouldn't be done. The perception is not
23 necessarily interchangeable, but it certainly is a very
24 important factor to any perception, political or no
25 matter how it works, but it isn't a black and white



1 system.

2 Q. Let's go back and look at this as
3 a simpler model?

4 A. I don't think any of them are
5 simple.

6 Q. Suppose we have a situation where
7 there is a proposal to build a landfill and there is a
8 study which has been done and the study demonstrates
9 there will be traffic congestion?

10 A. Yes.

11 Q. That is brought before a Board of
12 this type?

13 A. Yes.

14 Q. We would agree that would be a
15 legitimate concern to the Board?

16 A. Yes.

17 Q. They would have to bear that in
18 mind in determining whether to approve the project,
19 what mitigation was available for such things?

20 A. Yes.

21 Q. Let's assume we have another
22 landfill and in this case there is either no study or
23 there is study that says we have done the traffic
24 counts and we have got the predictions on the increase
25 and there won't be any congestion, but we have three



1 residents who live nearby and they all come to the
2 hearing and they say I have seen the study, but my
3 perception is or my fear is that there is going to be
4 traffic congestion?

5 A. Yes.

6 Q. Are you suggesting that the Board
7 in my second case should treat those perceptions in the
8 same fashion that it treats the study in my first case?

9 A. I didn't say that at all.

10 Q. Fine.

11 A. I am certainly on record trying to
12 deal with these. I think if treated at all, the Board
13 might in conditions attached deal with that issue and
14 it sometimes can in terms of all sorts of terms, but
15 here we have a physical situation which I don't think
16 you can in fact count, because the frequency of
17 problems is not really susceptible to numerical
18 calculations and that is essentially one measure of
19 traffic safety.

20 Q. You have agreed, I think, from
21 your answers to my simplified case, that perception is
22 not interchangeable with more scientific study?

23 A. No, it's another factor.

24 Q. With respect to traffic here and
25 to the extent there is a study involving Site D and



1 comparing the sites, you would agree that that is the
2 work done by Giffels?

3 A. Yes.

4 Q. If we go to Mr. MacLeod's work,
5 and I am referring to Exhibit H-14 and to Appendix B,
6 do you have that?

7 A. I am sorry. I have gone too far.
8 Here we are. I think I have the wrong one.

9 Q. Appendix B.

10 A. I thought you said D.

11 Q. What I would like to do is read
12 the quotation under conclusion on page B-11:

13 "In light of the fact that no major or
14 significant negative transportation and
15 traffic safety impacts have been
16 identified with either site and that on
17 balance there is no clear overall
18 advantage with either site over the
19 other, there is no site preference with
20 respect to transportation. Site D and
21 Site F are considered of equal merit."
22 Do you see that?

23 A. I do.

24 Q. If we were then analyzing the
25 degree here, would you agree with me that based on the



1 study, then the answer based on your chart, N-607,
2 whatever it was, would be the same for both sites?

3 A. Could you repeat that again?

4 Q. That the answer on your chart N-
5 607 would be the same insofar as it analyzes
6 transportation or purports to do so?

7 A. Taken on Giffels, yes.

8 Q. You raised with us this business
9 of interference with agricultural machinery. Do you
10 recall?

11 A. Potential for negative affect on
12 the existing transportation system.

13 Q. Hang on. In your evidence with
14 Ms. Cronk, you raised the matter of interference with
15 agricultural vehicles, and do you recall?

16 A. Yes, and it was raised by the
17 residents.

18 Q. Can we go to page 2 of B-2, the
19 same Exhibit, H-14?

20 A. Yes.

21 Q. Do you see under the
22 considerations with respect to Site D on Table 1, net
23 environmental effects, we have potential conflicts with
24 agricultural vehicles, the second last of the four
25 points?



1 A. Yes. It is also mentioned on
2 B-11.

3 Q. Would it appear that Mr. MacLeod
4 or Giffels took this into account in doing his work?

5 A. Yes.

6 Q. Can we agree therefore that that
7 factor has been considered, and again if you were to
8 rely on the Giffels work and then to apply the kind of
9 analysis you have undertaken on your chart, N-607, the
10 answer you would get with respect to the two sites
11 would be the same?

12 A. If you considered all those
13 factors as he has to be low in every case, yes.

14 Q. Of course if we go to your
15 exhibit, in fact transportation is not considered the
16 same and you have potential for negative effect on
17 existing transportation system, Site D yes, and Site F
18 no. Do you see that?

19 A. Yes.

20 Q. I am going to suggest to you that
21 by using the word "potential" what you have done is to
22 in effect ignore the study undertaken by Mr. MacLeod?

23 A. Oh no, by no means.

24 Q. Aren't you using that word
25 potential on the basis that there will be a change in



1 the area of Site D but none in the area of Site F?

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

3 Q. What is the basis for the
4 distinction here?

5 A. I believe that there is a
6 potential for that -- for a negative effect on the
7 transportation system and that it is quite important
8 and I would rate above the other ones set out in the
9 Giffels other sections of analysis.

10 Q. That is the matter of agricultural
11 vehicles?

12 A. Yes.

13 Q. Were you here for Mr. MacLeod's
14 evidence?

15 A. No, I wasn't; I just read his
16 report.

17 Q. In this particular case, what you
18 are telling us is that you understand this work better
19 than the specialist?

20 A. Oh no. I am saying that the
21 specialists work in numbers of vehicle turning
22 movements, determinations of what geometric facilities
23 are provided and I don't quarrel with that at all. This
24 is not a factor that I think is something that I think
25 a traffic engineer has any more specific expertise than



1 a farmer who has practically been on the roads and
2 knows how the vehicles relate to him and indeed the
3 Ministry of Agriculture and Food who has frequently
4 said that this is one of the problems in an
5 agricultural area.

6 Q. It is the expression of concern
7 here by the farming community that leads to this
8 distinction?

9 A. And they are the community up
10 there.

11 Q. Is that a yes?

12 A. Yes, yes, in part it is that.

13 Q. So we know it's not that you
14 disagree with Mr. MacLeod's work, but it's the
15 expressions of concern from the community?

16 A. Yes.

17 Q. So here we are in this situation;
18 we have a study which says there won't be a problem but
19 we have a perception in the community that there will
20 be and you are prepared in the circumstances to give
21 more weight to the perception than the community, is
22 that not the truth?

23 A. No. The study to start with, and
24 it's not correct when you say the study said there was
25 no problem, because the study says there is, but it



1 gives the impact as low.

2 Q. It gives the impact at the two
3 locations as being the same?

4 A. He says he can't choose between
5 the two and that's his conclusion. He doesn't say
6 there is no impact. I am saying that that appears to
7 me to be a pretty important one because he has not only
8 acknowledged it as a fact that there is potential for
9 conflict, the words I have used, "potential for
10 conflict with agricultural vehicles" and I think that
11 is something in an agricultural community that one
12 should perhaps give a bit more importance to than some
13 of the other numerical things.

14 Q. Aren't we back at the first part
15 of your answer that you think you understand this
16 better than Mr. MacLeod and in the second part, aren't
17 we back with what the people say here, their
18 perception, it is more important than what Mr. MacLeod
19 wrote; doesn't it have to be one of those things that
20 causes you to see the distinction between the two
21 sites?

22 A. Certainly.

23 Q. If it is Mr. MacLeod's work you
24 disagree with him on, then you are saying you
25 understand his work better than he does?



1 A. That's not true at all.

2 Q. On the other hand....

3 A. That's saying all telephones are
4 black and therefore everything black is a telephone.

5 Q. On the other hand, if you are
6 telling us that what raises this concern is the
7 perception of the community, then haven't you fallen
8 into precisely the trap which I suggested to you in my
9 rather simple model where we have a case where a study
10 says there is no problem but people perceive there is
11 and you are going to pay more attention to that
12 perception than the reality -- than to the conclusions.
13 in the study?

14 A. I don't say that at all. To start
15 with, we know that all scientists or all experts in
16 matters where you calculate things aren't necessarily
17 correct. I didn't say you gave greater weight to
18 perceptions than you do to facts, because you don't,
19 you must take them all together. The farmers said that
20 they have problems with trucks and I believe them and I
21 don't think from my experience, and quite a lot in
22 dealing with our traffic engineers and dealing with
23 transportation problems or transportation matters in
24 rural areas, that there is much you can do about it,
25 because you can't avoid that conflict. There is a



1 potential for conflict and that is why I put it in the
2 same way Mr. MacLeod said there is a potential for
3 conflict.

4 Q. You said all scientists aren't
5 always right; isn't that what you just said?

6 A. Yes, because you can't be one
7 hundred per cent right.

8 Q. Are you saying you have analyzed
9 Mr. MacLeod's work and he isn't right?

10 A. He doesn't do any analysis of that
11 and you can't in quantification terms and he doesn't
12 give a single figure. He says he thinks there is a
13 potential -- due to the nature of adjacent land use,
14 the potential for conflict with slower-moving
15 agricultural vehicles is greater for Site D and that is
16 what I said.

17 Q. Coming back to the point I made,
18 when you look at potential, what you are doing, instead
19 of looking at -- let me rephrase that. When you look
20 at potential and use the word potential, what you are
21 in effect doing is ignoring the ultimate conclusion
22 that the sites are essentially the same?

23 A. No, because I have broken this
24 down into a series of factors.

25 Q. Is transportation mentioned



1 anywhere else in these factors?

2 A. It isn't.

3 Q. So far as transportation is
4 concerned, you agree that what you have been doing is
5 ignoring the ultimate result of the study?

6 A. I don't know if it's a result or
7 an opinion he is giving, but I have given some weight
8 to that particular factor which I think is important.

9 Q. Can we agree that no matter how
10 you look at it, given Mr. MacLeod's work, that the
11 degree of difference in terms of overall impact with
12 respect to traffic at these two sites would not appear
13 to be that great?

14 A. It isn't black and white, correct.

15 Q. I don't know what that means.
16 Would you agree it is not that great?

17 A. No, that's true.

18 Q. That's true?

19 A. Yes.

20 Q. Can we then move ahead and look at
21 noise. I take it here that at some point Proctor &
22 Redfern undertook -- the traffic part undertook its own
23 study in 1972?

24 A. Traffic and noise.

25 Q. On Site D you are relying on the



1 Region's work?

2 A. Yes.

3 Q. With respect to that and again
4 considering the measure of degree, can we look at Mr.
5 Coulter's work and this you will find at H-14, Appendix
6 H. Do you have that?

7 A. I'm almost there. Yes.

8 Q. With respect to traffic or impact
9 from traffic noise, can we look at page 2?

10 A. Yes.

11 Q. The last paragraph:

12 "For both sites the additional traffic
13 noise generated is minimal."

14 Do you see that, the last paragraph,
15 first sentence?

16 A. Yes.

17 Q. Can we agree in the mind of Mr.
18 Coulter, that the degree of difference here would
19 appear to be small in relation to traffic noise?

20 A. It is difficult really to agree
21 with that because when you are evaluating it in
22 scientific terms, what he says then is absolutely
23 correct, but when thinking of it in more general terms,
24 then the additional traffic on Highway 25 he says is
25 minimal and for what small increase in traffic noise



1 there will be, Site D will be more noticeable, but that
2 will be continuous over the entire life of the site.

3 In Site F's case, they will only
4 experience sound levels slightly above the background
5 noise for about two years and so you have a difference
6 which I think is fairly important and yet in a
7 numerical sense, that is what I am saying, I think I am
8 entitled on the basis of the facts he gives here to
9 draw slightly different conclusions. I think in terms
10 of disruption of quiet enjoyment of nearby properties,
11 it will have more of an effect on D and it is important
12 and while the "No" on Site F is qualified because of
13 this factor, I think one can say that there is in fact
14 disruption of quiet enjoyment.

15 Q. Can we agree that the degree, and
16 I don't want to argue, but the degree of difference
17 between the sites would be minimal and there may be a
18 difference and I will accept that, but the degree in
19 Mr. Coulter's view would appear to be just minimal, the
20 degree of difference?

21 A. I don't like the word minimal,
22 because what does minimal mean. It is relatively
23 small, but there is a difference.

24 Q. Relatively small?

25 A. It is enough when you put visual,



1 dust, noise and odour and so on, all of which may be
2 within the Ministry guidelines and so on, when you add
3 them up.

4 Q. We will add everything up in a few
5 minutes, but for the moment we have agreed that for the
6 purposes of traffic noise, you agree the degree is
7 relatively small?

8 A. If we can wait until the end of
9 that, I think while you have referred me to the two
10 paragraph you did, one must acknowledge on H-3 we
11 reconfirmed our findings during the environmental
12 assessment phase for the selection of Halton's sanitary
13 landfill site that Site F is the preferred location.

14 Q. I have accepted that you have said
15 that one has a larger affect.

16 Can we now go to the overall summary
17 chart, the last page, so turn over the page?

18 A. Yes.

19 Q. And looking at operation of the
20 site, can we agree first of all that the impact of
21 constructing a berm for eight weeks at the beginning
22 and removing it twenty years later and taking eight
23 weeks is a reasonably short-term impact?

24 A. That of itself, yes.

25 Q. Looking at the operating phase,



1 and we agree that's the longer period, the twenty year
2 period?

3 A. Yes.

4 Q. If we compare Mr. Coulter's work
5 on site -- sorry, look at Site F at the top first of
6 all. Landfill noise and it's nil for the first period
7 or for the first and last periods, and at the end -- in
8 the middle for two years it's low?

9 A. Yes.

10 Q. If you look at the similar periods
11 for Site D, it's nil to low at the first fifteen years
12 -- the first period nil to low and the last period is
13 then low to medium for the last two years in the
14 middle?

15 A. That's right.

16 Q. There is a difference?

17 A. There is a quantifiable difference
18 in his terms and F is preferred.

19 Q. Absolutely. Can we agree that the
20 degree of difference, to pick up the term you used
21 before, is relatively small?

22 A. Yes, I guess -- it's not
23 absolutely dramatic.

24 Q. Fair enough. We also talked
25 about visual as being a component of these things and I



1 was looking at interference with national environment,
2 a) topography, and is that really the visual impact?

3 A. No. That wasn't visual impact;
4 this the actual change in the topography.

5 Q. So visual fits in to this
6 disruption matter, the disruption factors?

7 A. The natural environment, yes.

8 Q. I think everybody has agreed and
9 certainly Mr. Wright did, that the visual impact, as he
10 put it, at Site D is high and certainly less than Site
11 F, and I don't want to be appearing to be disagreeing
12 with that, but I want to ask you a few questions about
13 visual impact in your view. Can we agree that impact
14 first of all is a function of change, and if nothing
15 changes, there is no impact?

16 A. No, I don't think that that's
17 true. The impact on the residences of 401 Highway just
18 west of Yonge Street has been high for the last thirty
19 years to my knowledge and will continue to be high for
20 however long the highway is there and so it is a change
21 in impact of traffic, a factor.

22 Q. Surely the function of the measure
23 of the impact of Highway 401, since you picked that
24 example, is that at one time there were fields there
25 and then you built a road there?



1 A. At one time there were houses
2 there and they built a road there.

3 Q. The degree of impact arises as a
4 result of the change, the presence of the road?

5 A. There is an impact all the time
6 and that is why the Ministry has guidelines and says if
7 you start exceeding the guidelines, then do something.

8 Q. I am confused, so let's try
9 another example. Suppose we have....

10 A. If I can return to the noise
11 people, because it's a good example, they say we have
12 noise from cars already on 403 Highway and we will
13 increase the dB Leq slightly and so that change which
14 is the incremental amount of impact, they are already
15 impacted by the noise and the additional impact will be
16 nothing virtually and therefore it is acceptable and
17 this is exactly what the Ministry of the Environment
18 does.

19 Q. The degree of impact is a function
20 of the amount of the change?

21 A. Yes, but you said there would be
22 no impact if conditions didn't change.

23 Q. Can we agree the degree of impact
24 is a function of the degree of change?

25 A. Yes.



1 Q. If we have flat plain and build a
2 hill in the middle, we have changed it?

3 A. Yes, dramatically.

4 Q. The degree of change would be a
5 demonstration of the degree of the impact, can you
6 agree. If you built the Rocky Mountains, it would have
7 a larger impact than if you build a rolling hill?

8 A. Yes, yes, true.

9 Q. And you want....

10 A. And if you build something a foot
11 high, it can get smaller and smaller.

12 Q. Would you agree that people are
13 going to measure -- that's not correct. The actual
14 degree of impact will depend upon then the nature of
15 the change?

16 A. Yes.

17 Q. If, for example, we take a flat
18 plain and build a hill, but we round it and shape it
19 and put trees on it, can we agree that that's different
20 than merely building a straight flat harsh plateau?

21 A. It is different, but it wouldn't
22 necessarily change the degree or the severity of the
23 impact or change. It would be nicer looking.

24 Q. If it's nicer looking, can we
25 agree it would be more acceptable to people?



1 A. No, that doesn't follow at all.
2 Somebody may buy something from Holt Renfrew which is
3 absolutely gorgeous to them, but I think it's terrible,
4 but it's my perception and all the people of the area
5 clearly testified they loved the views and it would be
6 totally decimated.

7 Q. There may be somebody out there
8 whose perception would be that seeing a rolling hill in
9 their backyard would be quite pleasant?

10 A. There might be conceivably, but I
11 don't happen to think so, because what I put down here
12 is that it is a disruption of quiet enjoyment and in
13 fact there was unanimous feeling by all the residents
14 who I heard, and it is certainly my feeling that that
15 change would be disruption, and it would really be
16 dramatic.

17 Q. So we agree that the impact may
18 depend upon the perception of the individual involved.
19 We seem to be able to agree on that much?

20 A. Yes. And in this case I don't
21 think anybody can argue it's not real, because you have
22 yourself.

23 Q. In this case, can we agree that
24 the perception of how people will respond to this is
25 just that, going back to our discussion of perception,



1 but that perception -- they haven't been able to and
2 haven't been asked to visualize the actual land form
3 that will be there?

4 A. They haven't been able to, no.

5 Q. They wouldn't be able to visualize
6 the land form?

7 A. I don't think -- I think they can.
8 It may be difficult to imagine exactly because they
9 haven't been trained in perspective and so on, but I
10 think Mr. Kauffman's little diagram is what people
11 think of and what it actually is going to be, pretty
12 close.

13 Q. To the extent that this Board were
14 to find that what Mr. Kauffman presented wasn't
15 representative of what they were going to see and was a
16 bit worse, can we agree that people are not able to
17 determine what the actual impact would be and there is
18 uncertainty?

19 A. If you are trying to measure it
20 numerically, you are right, but not in terms that
21 social studies have tried to determine. In other
22 words, there is a very substantial visual impact.

23 Q. But there is uncertainty as to the
24 actual degree of that impact?

25 A. Whether it is 95 per cent or 90



1 per cent, you are right, but it is over 90, so I am
2 satisfied and I do think in 3D terms and can visualize
3 because I have been doing it ever since I was in
4 university.

5 Q. Now I think this is my principal
6 point. Surely when you come to do this kind of
7 comparison, the sort of analysis that we have now
8 undertaken as to the actual differences with respect to
9 these certain factors helps us in undertaking the
10 balancing that this kind of exhibit purports to
11 demonstrate. We know now that the actual difference in
12 terms of noise is, I think you said, relatively small
13 and with respect to odour -- with respect to traffic, I
14 think we agreed it was also small and I don't recall
15 the words you used with respect to dust, but these are
16 significant comparisons and don't you need to know that
17 before you can really undertake an analysis of the two
18 sites?

19 A. I think when you say disruption of
20 quiet enjoyment, quiet enjoyment is the way people
21 enjoy their property and if you add up all these
22 things, all of which say on these counts that Site F is
23 preferred and that there will be some disruption, I
24 think one can come to yes and no. It may not be fair
25 and the Board has been exposed to every one of these



1 studies and they have seen them, and so my tallying up
2 and saying yes or no, which I agree with you may be 53
3 per cent to 47 per cent in some cases, some of the
4 factors which add up to these, but the Board is well
5 aware of those, but I think that one can say, and I was
6 comfortable in saying that there will be disruption of
7 nearby properties by Site D and there won't be with one
8 possible qualification for Site F.

9 Q. We have agreed you have to balance
10 all these things together to complete the comparison,
11 correct?

12 A. Yes, just as the traffic
13 consultant did.

14 Q. We have agreed that compatibility
15 is a matter of degree?

16 A. Yes.

17 Q. Would you agree with me, not that
18 you can't do yes's and no's, but to take into account
19 the actual degree of difference is a more refined
20 study?

21 A. It is looking at the individual
22 factors and giving the weight which obviously the Board
23 is going to do.

24 Q. That was my next point. You will
25 agree with the Board comes to understand its work, it



1 will have before it enough evidence to undertake these
2 kinds of interpretations I am putting to you and
3 interpretations that take into account the degree of
4 difference?

5 A. Yes, the Board will be able to do
6 that and these are conclusions I reached.

7 Q. When it comes to look at your
8 work, would you agree the fact that there are no
9 degrees taken into account, that is a limiting feature
10 to this exhibit, M-607?

11 A. I don't think it's a limiting
12 feature, because I looked at those and I read the
13 consultants' reports and I read the papers and made my
14 own observations and came to these conclusions and the
15 Board may well come to other ones, but I am giving you
16 my opinion based on the evidence, and it's less full at
17 D than at F.

18 Q. If it could be demonstrated that
19 there was in fact a real and high, a high degree of
20 risk to groundwater users at one of these sites, would
21 you agree with me that that would have a tendency to
22 demonstrate that the other site should be approved.
23 That would be a public health and safety feature
24 leading us to the other site?

25 A. I don't know if it would



1 necessarily approve the other site, because the Board
2 could say it wouldn't approve either site, but if there
3 was a high degree of risk to one, they could say we
4 won't approve that one.

5 Q. When we look at your chart, if
6 that were the case, then all we would find at No. 10 is
7 a yes or no?

8 A. Yes.

9 Q. Would you agree then, sir, that
10 there is a limiting feature to this because one yes or
11 no might represent a problem so severe that it would
12 rule out the approval of the site and you can't learn
13 that from reading that chart?

14 A. Of course you can't. One has to
15 read all the reports and I am saying that this is a
16 summary of my evaluations.

17 Q. Would you agree that the way that
18 summary can be used is limited by its absence of
19 degree?

20 A. Yes. It is limited, yes.

21 Q. I have just one other area I want
22 to touch on.

23 A. Can I get some water?

24 MR. LEDERER: This would take me, I
25 would think five minutes and then I would be finished.



1 MR. LANCASTER: We might as well wait.

2 MR. LEDERER: Shall I finish?

3 MR. LANCASTER: Yes.

4 MR. LEDERER: Q. You raised something
5 with Ms. Cronk and that is this idea of locational
6 equity. I just want to talk about that for a moment.
7 As I understand your evidence to Ms. Cronk, there are
8 two components you at least have reviewed with respect
9 to this idea and the first is whoever produces the
10 waste ought to have the landfill near them?

11 A. That is one factor.

12 Q. With respect to that factor, can
13 we agree that that factor may actually manifest itself
14 in other considerations? For example, it is
15 conceivable that having the waste disposal facility
16 near the generators of waste would have implications as
17 to the impact from traffic, since trucks would have to
18 travel a shorter distance?

19 A. In that sense, yes.

20 Q. So there is some room and you
21 would have to know the actual roads being used, but
22 there is some room to believe that that notion would
23 manifest itself at least in the area of traffic.

24 A. Yes.

25 Q. To the extent that it costs less



1 money to travel less distance, that might manifest
2 itself in terms of cost, the cost of trucking?

3 A. That is over-simplified, but that
4 is true and to a large extent because it is all the
5 results of stopping times which all have implications
6 for trucks.

7 Q. The other factor you discussed
8 with respect to this, and this relates to your chart of
9 other landfills, and perhaps you could put that up for
10 us, N-605. As I understand the notion here, and please
11 correct me if I am wrong, what this shows us is where
12 landfills have been placed in this area in the past?

13 A. Yes.

14 Q. The notion here is that everybody
15 ought to take a turn having this not terribly pleasant
16 public use in proximity to their area, is that fair?

17 A. That is one of the notions.

18 Q. One idea is that it has been in
19 one community for thirty years and it's done its duty
20 and it ought to go somewhere else?

21 A. That's right.

22 Q. You could just as easily apply
23 that notion to other public uses?

24 A. Yes. I can see where you are
25 going.



1 Q. You could take this to a logical,
2 it seems to me, slightly ridiculous extreme....

3 A. Move the 401.

4 Q. Let's take Highway 401 and funny
5 you should pick that. Will you agree with me, and I
6 may say that I have been often forced to ponder what
7 would happen to 401 if it had to be approved under the
8 Environmental Assessment Act?

9 A. It would be like Spadina.

10 Q. I know the first Spadina
11 Expressway hearing took two weeks. Now, I want to
12 look at this issue of 401 seriously. Can we agree that
13 Highway 401 has been place for something like thirty
14 years, as I think it was built in the fifties?

15 A. Yes.

16 Q. Building a highway of that
17 magnitude through farmers' field causes disruption of
18 the kind we have been talking about?

19 A. You are very right.

20 Q. It makes noise?

21 A. Yes.

22 Q. Smells?

23 A. To an extent.

24 Q. It fragments farmers' fields?

25 A. It does.



- 1 Q. It fragments property ownership?
- 2 A. Yes.
- 3 Q. Causes discomfort?
- 4 A. Yes.
- 5 Q. Using the logic we were talking
- 6 about with respect to Exhibit N-605, could we posit the
- 7 notion that those people have done their tour of duty
- 8 and they have put up with this thing for thirty years,
- 9 so we had better move Highway 401?
- 10 A. You could put forward that notion.
- 11 Q. To be consistent and to be
- 12 logically consistent with the notion that we have done
- 13 my turn with landfill, so had better move it, it is
- 14 precisely the same kind of logic, isn't it?
- 15 A. I suppose to a degree, yes, and it
- 16 is certainly more difficult in degree.
- 17 Q. So would you agree this whole idea
- 18 of taking my turn has a certain logical limit?
- 19 A. That is elegantly phrased and I
- 20 would agree.
- 21 Q. I always like compliments from you
- 22 because I have had so few of them over the years.
- 23 A. Sorry.
- 24 Q. Let's take this one step further
- 25 if we can. Would you agree with me that in fact what



1 happens is over a thirty year period changes have
2 occurred in a community and development takes place?

3 A. Yes.

4 Q. People will move into a community?

5 A. Yes.

6 Q. If they move in with a road like
7 the 401 present, they move in knowing it's there?

8 A. Yes.

9 Q. That may have some effect on the
10 property value of the home they bought?

11 A. Yes.

12 Q. Certainly they move in
13 understanding that one of the costs of living in that
14 area is being near that highway?

15 A. Yes.

16 Q. To go back to Site F, I think the
17 evidence is that landfilling has been going on in this
18 area for something like thirty years?

19 A. Yes, or more.

20 Q. People have been moving in over
21 that period of time?

22 A. Yes, and I think that's reasonable
23 to expect, but I am not sure how many new homes have
24 been built in the area that can actually see it.

25 Q. To take the houses on Waterdown



1 Road, were they thirty years ago?

2 A. I think many of them probably
3 were, but none of the ones over in the Tyandaga
4 community were.

5 Q. Those people moved in knowing
6 there was landfill nearby?

7 A. Yes.

8 Q. Is it fair to say therefore that
9 when you look at the issue of social equity, they moved
10 in knowing, and this was a price of living in this
11 community?

12 A. Absolutely.

13 Q. Can we agree that for the thirty
14 year period this has been going on, people have had
15 trucks driving through the streets?

16 A. Well...

17 Q. To the extent there is traffic
18 impact, they have had it at this location for thirty
19 years? Can we put it that way?

20 A. I must qualify that because
21 Highway 403 wasn't built until the sixties or late
22 fifties and so when the initial Bayview site was there,
23 they were going up King Road -- along Plains Road and
24 up King Road and Waterdown Road, but apart from the
25 local collection trucks, they haven't been driving on



1 the local streets, and I think very few, according to
2 Giffels, use Brant Street north and none go up Kern's
3 Road.

4 Q. When you deal with locational
5 equity, couldn't you as easily look at a group of
6 people as having been acclimatized by the fact they
7 moved into an area and accepted it and compare that to
8 people who are not used to it and have not been asked
9 to accept it?

10 A. As a part factor, and I think one
11 would have to go on to say even though they have had it
12 for the last thirty years, was it a good idea to have
13 it there anyway, and is it a good idea, because the
14 effects may be go great that that would mitigate
15 against the fact they may have got used to it, and in
16 this case, Site F, not only has it been there for
17 thirty years, but it doesn't affect anybody in the
18 terms we have put forward, or to such a small extent it
19 really doesn't matter.

20 Q. When we consider this concept of
21 locational equity, whatever it means precisely, can you
22 indicate to us the considerations you would apply and
23 what conclusion it leads you to?

24 A. My conclusion is that it is
25 appropriate on the basis of the waste generated in the



1 south as I said, that it is close to the centroid in
2 efficiency terms, it has been there for thirty years
3 and I think it is reasonable to expect that almost
4 everybody has known about it who lives anywhere near it
5 and fourthly, it's impingement upon people is virtually
6 nil and fifthly, that any expansion will not make any
7 change and therefore the changed impact will be
8 absolutely nil.

9 MR. LEDERER: I think I am finished, but
10 since it's the appropriate time for the break, could I
11 hold my final decision until after the break?

12 MR. LANCASTER: You want to think up some
13 more?

14 MR. LEDERER: I precisely don't want to
15 think up any more questions.

16 MR. LANCASTER: Ten minutes.

17
18 --- Recess

19
20 MR. LANCASTER: Please be seated. Mr.
21 Lederer, did you find any more questions?

22 MR. LEDERER: Two more, because I don't
23 want to disappoint people on my inability to predict
24 anything. Literally two questions.

25 Q. Just turning to this thing of



1 locational equity, can we agree that no matter what
2 factors you consider and no matter how you attempt to
3 apply them, in the end it is only something that is
4 going to be a factor in this kind of determination when
5 everything else is equal. If there is a public safety
6 preference for one site or the other then locational
7 equity won't be a big factor in the decision?

8 A. If you can't find a site that is
9 safe except in one area, then that is paramount.

10 Q. Secondly, something I wanted to
11 clarify in my own mind. If you go to the second page
12 of Exhibit 607?

13 A. The chart?

14 Q. Yes. Here you have something
15 which you don't call compatibility factors, but
16 conformity factors. I take it this relates to the
17 questions Ms. Cronk put about compatibility,
18 conformity, and compliance and you gave us
19 interpretations for those three words?

20 A. Yes.

21 Q. I am curious, but do you recall I
22 asked you a question in which I said in the abstract do
23 we agree that it may be with all the studies taken and
24 the proper decision arrived at, you may have to, in the
25 context of the Food Land Guidelines for example, place



1 a landfill in an agricultural area and in the abstract
2 that could happen?

3 A. In the abstract.

4 Q. Again just dealing with the
5 abstract and assuming that that in fact is what happens
6 in this case, I am curious as to what word you would
7 apply to that. I take it it would not make this use
8 compatible with surrounding agriculture in your
9 terminology?

10 A. Correct.

11 Q. And it wouldn't be conformity
12 because it would still be contrary to the priority for
13 agriculture?

14 A. I think that's correct yes. If
15 you have gone through all the studies and cannot find
16 another site that meets all the criteria set out, then
17 it could conform to the guidelines.

18 Q. You might have conformity?

19 A. You might have conformity because
20 it conforms with the tests you have to undertake.

21 Q. I take it we can apply the same
22 kind of logic to virtually each of these various
23 factors?

24 A. I think you have heard in respect
25 to Transport Canada policy, that you have to go through



1 these detailed site specific matters.

2 Q. And the mineral aggregate resource
3 policies are not unlike the Food Land Guideline
4 policies?

5 A. Yes.

6 Q. The Ministry of Environment Land
7 Use Compatibility Guidelines, and without getting into
8 an argument about whether they apply, because there is
9 or is not a site there, it does call for studies and
10 with studies you may have development within the 500
11 metre area?

12 A. This is entirely abstract, yes.

13 Q. In the circumstances, all of those
14 where you have the studies and you have a determination
15 that takes you to a site, you could possibly have
16 conformity because it would conform with the policies,
17 the property studies having been properly undertaken
18 and a decision properly rendered?

19 A. Yes.

20 MR. LEDERER: Those are all my
21 questions. Thank you.

22 MR. LANCASTER: Thank you. Mr. Tzekas.

23 CROSS-EXAMINATION BY MR TZEKAS:

24 MR. TZEKAS: Before I begin, two
25 matters of interest to all of us. First of all, I



1 anticipate being completed tomorrow before lunch in all
2 probability. I anticipate even with reply hopefully we
3 will get it done by lunch, but if not, shortly
4 thereafter. I would just like to confirm that I will
5 not be under an obligation at that point to begin a
6 case and we will in fact wait until Monday for the
7 hydrogeology.

8 MR. LANCASTER: That is fine, but the
9 only thing we were concerned with was to give you a
10 definite date when you could start your case.

11 MR. LEDERER: It is amazing what the
12 threat of a Friday can do.

13 MR. LANCASTER: I will use it more
14 often.

15 MR. TZEKAS: There is great incentive to
16 shorten this and when I go home tonight I will take a
17 hard look.

18 The second point is that the Ministry's
19 counsel could not be here this afternoon and I
20 understand Mr. Tidball may have some questions he
21 wishes to ask, and although it is out of order, we
22 discussed this among counsel and we are agreed that if
23 he does have questions, he can put them to the witness
24 tomorrow.

25 MR. LANCASTER: I don't think the



1 Ministry is out of order in any of these examinations
2 and he can go first, last or in the middle.

3 MS. CRONK: Surely that is qualified by
4 whether he goes into Friday or not.

5 MR. LANCASTER: We don't mind.

6 MR. TZEKAS: Q. Mr. Bacon, I am for
7 the balance of this afternoon, I think, going to go
8 through or be able to get through one area of my cross-
9 examination bit I think it is fairly important. I
10 would like to understand exactly what it was that went
11 into the preparation of your report and your opinions
12 and so on. I know I may be retreading on some of the
13 things you dealt with with your own counsel, but I
14 would like to get a clear understanding.

15 From your evidence I have noted you were
16 retained in 1979 and the first thing you were asked to
17 investigate was the suitability of the NSP lands for a
18 commercial waste site. I take it that was the first
19 exercise you embarked on?

20 A. Yes, but as I explained, in
21 undertaking any class of that sort when reviewing all
22 of the factors one obviously looks at other things that
23 the land might be used for as well, even if it's only
24 in a very general way.

25 Q. I didn't by my question mean to



1 suggest that that wasn't considered, but the focus of
2 the retainer in 1979 was to consider the NSP lands and
3 to come to a conclusion as to whether those lands would
4 be suitable for a commercial waste site, and that was
5 the exercise, or for some other use?

6 A. Yes. We were at that time
7 considering all acceptable waste which might be
8 commercial, residential or some industrial non-toxic
9 wastes.

10 Q. In fairness, I think that's set
11 out in the report, the kind of wastes you were looking
12 at. Now, if I understood correctly, and trying to get
13 this developed chronologically, by August of that year,
14 you had developed what you termed a situation study?

15 A. We had undertaken the steps that
16 go into our situation report study and I had reported
17 verbally on the planning aspects which, as I have said,
18 includes the other ones and included engineering and
19 anything else I gathered in a verbal way to Mr. New and
20 Bud Christensen.

21 Q. And your conclusion on the
22 planning aspects, and I think this was qualified by
23 assumptions as to the site's suitability from an
24 engineering point of view, but your conclusion on the
25 planning aspect was that the NSP lands were a suitable



1 site for a commercial waste facility?

2 A. For acceptable waste, yes.

3 Q. For all of this...

4 A. In a preliminary way.

5 Q. Do I take it that it was on the
6 basis of that particular opinion that NSP began its
7 pursuit of its various proposals and applications to
8 actually turn its site into a landfill location?

9 A. Well, Mr. New, the president of
10 NSP, announced to the Region his intention and that
11 letter is in evidence, of undertaking the studies and
12 making applications. We continued through that fall to
13 further those investigations and by the middle of next
14 year, they proceeded to one -- through 1980, and we had
15 got to the point where Morrison Beatty thought the site
16 was safe and we had undertaken a number of other
17 studies and felt comfortable in submitting an
18 application for an amendment to the regulations of the
19 Parkway Belt West Plan in 1982 or whenever it was.

20 Q. Those other investigations, the
21 hydrology and so on, the biophysical, the details of
22 it, I take it they were all to some extent inspired by
23 your positive opinion in August of 1979?

24 A. Yes.

25 Q. That the site was otherwise



1 suitable?

2 A. You've got to start somewhere. It
3 did start there, yes.

4 Q. Really there is nothing tricky or
5 devious in this, but I wanted to understand what the
6 process was. In August of 1979 you gave that verbal
7 situation, study, conclusion to the client and on the
8 basis of that conclusion, the client instigated a
9 series of more technical studies, if I can call it
10 that?

11 A. Yes.

12 Q. That ultimately resulted in the
13 proposals we had described to us?

14 A. They worked concurrently with
15 specific engineering studies going on and they were
16 reported on as well to the client.

17 Q. Throughout all of this, Mr. Bacon,
18 I take it it was you, rather than anyone else at your
19 firm who was charged with the responsibility of
20 quarterbacking, if you will, or promoting the studies
21 and the applications and proposals that resulted from
22 them?

23 A. That's a little bit difficult to
24 say, partly because of the organization of our office.
25 Bob Tait, with whom I was collaborating closely, is



1 manager of our Hamilton office and I was then largely
2 working out of the Toronto office and Dave Schram, who
3 signed on my behalf at least on a couple of the letters
4 and did some of the investigative work was working out
5 of the St. Catharines office, and I was spending time
6 doing work for the National Capital Commission and
7 others up in Ottawa. Who actually quarterbacked it is a
8 little difficult to say as there were occasions when I
9 was certainly quarterbacking because specific studies
10 with which I was directly connected and was actually
11 doing work, were perhaps more important than some of
12 the other ones in terms of time spent in allocating and
13 people drafting and in other cases Bob Tait was
14 quarterbacking because he is an engineer and manager of
15 our Hamilton office. It is difficult to answer that
16 question. It moved between one and the other.

17 The manager of the job, the job number,
18 was Bob Tait at all times and he has been the
19 administrative manager.

20 Q. Within your firm, I take it that
21 is a designation you make with respect to a particular
22 file or project?

23 A. That is correct. He makes sure we
24 have some sort of contract and sends out the bills.

25 Q. Am I right in thinking that in



1 terms of the negotiations with the City, that you were
2 very prominent in those?

3 A. Yes.

4 Q. I notice just from the
5 correspondence, Mr. Bacon, that your name seems to be
6 at the bottom of most, and not all of it, but a good
7 portion of it?

8 A. Yes.

9 Q. With respect to the technical
10 reports which were prepared after you had given your
11 initial opinion, am I right in thinking as well that
12 those reports were focused on the NSP lands and on the
13 specific -- were the basis for the specific proposals
14 that NSP brought forward?

15 A. I think I understand it, but could
16 you repeat that, please?

17 Q. Sure. Am I right in thinking
18 that the focus of the technical reports that were
19 prepared by your firm in connection with this project
20 were all on the NSP lands?

21 A. And not on somebody else's land
22 you mean?

23 Q. Yes.

24 A. Correct.

25 Q. To that extent, I take it that



1 it's fair for me to conclude, Mr. Bacon, that both you
2 from a planning point of view and the technical experts
3 from their areas of expertise, you were not seeking to
4 do a comparative analysis of this site to any other?

5 A. That is correct, and in our
6 studies and reports as opposed to our mandate once the
7 EA had started for the Region, when we were instructed
8 to review all reports.

9 Q. I'll get into that because I think
10 your role changes there and it is important for me to
11 understand it?

12 A. Yes.

13 Q. In the early stage of 1979, '80 or
14 '81, I take it that the focus of all of the work and
15 all of the studies was this particular piece of
16 property?

17 A. Yes.

18 Q. Therefore you weren't trying to
19 compare it to any other piece of property and I take it
20 as well you weren't extending the proposal or the
21 concept beyond the boundary lines of the NSP lands?

22 A. Correct.

23 Q. Now, you mentioned that your role
24 changed once the Region began issuing various reports
25 and I got that impression. Without getting into a



1 specific chronology, because I don't think it is very
2 important, but is it fair for me to say that at that
3 point, your focus really expanded beyond the NSP site
4 and....

5 A. In that sense, yes.

6 Q. The expansion beyond the NSP site
7 I take it was not for the purpose of coming to your own
8 conclusion as to what was a preferable site or not, but
9 really just to again look at the documentation the
10 Region was producing, analyzing it from the perspective
11 of your client's position?

12 A. Yes, I think that that's fair.

13 Q. During this stage, if I recall
14 correctly, there seemed to be a lull and I have the
15 word "abandon" in my notes, but that's not right. You
16 put aside your efforts to promote a specific proposal
17 for the NSP lands and focused on critiquing, if you
18 will, the Region's work?

19 A. Well, I wouldn't --

20 Q. If I am not being fair....

21 A. I don't think that is quite a fair
22 statement.

23 Q. All right.

24 A. After our discussions with the
25 City of Burlington and then with the Region we were



1 almost forced, and sometimes almost kicking and
2 screaming to say, okay, we'll wait until your study
3 comes out and as one saw as we went through the history
4 of it, we were promised something in '83 and we said we
5 would hold on until the summer of '83 and then the end
6 of '83 and then '84. We thought it would only be a
7 short time and it turned out to be seven years, which
8 was a lot longer, and had we known that we might have
9 taken a totally different role, but the role we took
10 was not abandonment in any sense, it was acquiescing, I
11 guess.

12 Q. That's the word you used in-chief?

13 A. Yes. I think we acquiesced rather
14 than abandoned.

15 Q. I'll try very hard not to get into
16 the sordid history of this because that for sure will
17 get us past lunchtime tomorrow and I am not sure
18 exactly how relevant it is?

19 A. It was really relevant to us, I
20 can tell you.

21 Q. We have this then, Mr. Bacon, if I
22 can summarize your work. At one stage your work was
23 focused on a particular property?

24 A. Yes.

25 Q. At another stage in this process,



1 and this is probably up to the preparation of your
2 report, I assume your role was primarily to critique
3 the work being done by others and to comment on it?

4 A. Critique, comment and also draw
5 from it any inferences about shortcomings that may have
6 been revealed as a result of the very substantial work,
7 the work carried on by the Region in case it was
8 necessary for us to carry out additional work on the
9 NSP site, or we deemed it was and then recommended so
10 to the client.

11 Q. When you say shortcomings, do you
12 mean in the process in general or just problems with
13 respect to the NSP site?

14 A. Problems in respect of the NSP
15 site.

16 Q. That was again a particular focus
17 that remained throughout?

18 A. Correct.

19 Q. The NSP site. All right.

20 A. Perhaps I should say that it could
21 be beyond the boundaries of the NSP site, and if there
22 were factors that affected the NSP site and its
23 working, transportation and so on.

24 Q. Transportation and that sort of
25 thing might extend beyond, and I can accept that.



1 A. Yes.

2 Q. Do I take it then that up until
3 that point in time, you were not instructed and did not
4 attempt to do any kind of a comparative analysis?

5 A. Correct.

6 Q. Between Sites D and F, or indeed
7 between the NSP lands and any other site?

8 A. Correct.

9 Q. At some point, Mr. Bacon, that
10 role changed, but when I read the planning report you
11 prepared, Exhibit N-586, I came to the conclusion that
12 even at this late stage you were not attempting to do a
13 comparative analysis and the purpose of this particular
14 report is focused on Site F?

15 A. Yes.

16 Q. Fair enough?

17 A. Yes.

18 Q. So you completed this work, as I
19 understand it, in January of this year and is it fair
20 for me to say that although you had been involved with
21 the process for many years, by that point in time you
22 had not been instructed, nor did you do a comparative
23 analysis to January of 1988?

24 A. Detailed comparative analysis, and
25 I have set out the fact in the report that I didn't do



1 more than I said in the report, which is review
2 documents and visit the site and so on. It was not a
3 detailed study the way the Region did it or that we
4 have done at Site F.

5 Q. Fair enough. I think you also
6 indicated to your own counsel that during the course of
7 your review of the Region's work you were generally
8 satisfied with the approach that was adopted and the
9 technical merit of the reports presented and so on?

10 A. I don't think I as asked in that
11 way, but I did say that in view of the way the Act is
12 written, I thought the process was carried out as well
13 as it could have been, and I indicated some problems I
14 thought there were with the Act in general, but that's
15 nobody's fault, that's the way the thing has evolved in
16 a province which is trying to always increase its
17 awareness and concern for the environment.

18 Q. I take it in critiquing or
19 reviewing the Region's work, there were no points in
20 time when you actually red-flagged any flaw in the
21 process or perspective that the Region had been
22 adopting?

23 A. Oh. Well, Bob Tait in one of the
24 reports, and I was a party to that, but sent out 110
25 questions I think. We went to a public meeting and



1 rather than spend the hours that it would have taken to
2 answer all our questions, we were asked to put it in
3 writing which we did and it was rather long. We red-
4 flagged a number of things, yes, during the course of
5 the studies and not so much questions of technique but
6 disagreement with some of the conclusions reached,
7 although in some cases there were questions of
8 technique.

9 Q. All right. Did any of those
10 particular concerns produce for you or make the results
11 that the Region arrived at suspect?

12 A. "Suspect" is a hard word. I
13 disagreed in degree with some of the conclusions that
14 were reached.

15 Q. Fair enough.

16 A. In respect of details on Site F,
17 but they weren't of a magnitude that were black and
18 white.

19 Q. With that chronology in mind, I
20 would like to go back to the report. As I read it, it
21 may be that I was very thick while reading this, but I
22 think you said in your evidence that the focus was on
23 the NSP lands?

24 A. Yes.

25 Q. And that the lands to the north



1 were only referred to sometimes?

2 A. I am sorry, the lands to the
3 north?

4 Q. Correct.

5 A. Can you qualify what you mean by
6 the lands to the north?

7 Q. The Azova lands.

8 A. Oh yes.

9 Q. Do I take it from that that the
10 focus of the report was again on the NSP lands and not
11 really on the proposal that the Region was putting
12 forward as its Site F, since Site F included the Azova
13 lands?

14 A. In specific terms you are correct,
15 of course, but in most of the considerations, the Azova
16 lands inevitably were part of those considerations for
17 a whole series of factors. For instance, in the hydro-
18 technical, hydrogeology studies undertaken, it is
19 inevitable that since we knew the Region was up here to
20 the north of NSP lands, and since we were well aware
21 that water flows downhill and we knew the geological
22 structure of the area, at least in as much detail as
23 everyone else did, and as the Region's reports came in
24 we knew it better and better, or perhaps in more
25 detail, where specific things were filled in, but water



1 flows downhill and generally so does the strata and it
2 comes up here (indicating), but factors affecting the
3 Azova lands were taken into account. For instance when
4 I was wandering along the Bruce Trail and driving
5 around these roads, I had in mind on a number of
6 occasions the Azova lands and took them into account.

7 Q. Maybe I wasn't being quite clear
8 enough. I am not suggesting for a moment that you just
9 ignored that property, because obviously it is there
10 and is part of the setting, but when I read this
11 particular report, what I drew from it was that your
12 focus was still on NSP and Azova was part of the
13 overall setting you considered and considered
14 carefully. I got that as being -- that is the
15 impression the report conveyed to me?

16 A. That is correct; we didn't drill
17 on Azova, for instance.

18 Q. I take it to that extent the
19 proposal you are focused on here was to some extent
20 different from the proposal the Region was putting
21 forward. Let me give you one example. Turn to page 54
22 of your report, and maybe this -- I just want to be
23 sure that when we read through this report we have a
24 clear idea of what it is you were commenting on and
25 what the basis of the work was and that is why I am



1 being so slow with this. You see there at the
2 beginning of the page it says:

3 "Some of the advantageous hydro-
4 geologic factors applicable at Site F
5 and identified by Morrison Beatty
6 Limited are as follows:...."

7 and then a whole series of things were listed. Do you
8 see that?

9 A. Yes.

10 Q. The reference is to Site F and I
11 do catch that at times, Site F during the report, but I
12 take it that when Morrison Beatty did their work, my
13 recollection is that it was started in a preliminary
14 way in 1979 and finished around '80 or '81 and they
15 were actually focused on the NSP lands and the NSP
16 proposals?

17 A. Yes, but any of those comments
18 there would certainly apply without drilling extra
19 holes to a very substantial degree to the Azova lands,
20 and partly for the reasons I have given, because if it
21 is flat land like some of the sites under
22 consideration, they might not have applied, but it's
23 obvious that many of them apply.

24 Q. I would like to look at that
25 because there are differences, and I will take you



1 through your application and try and point out some of
2 them. You will see, for example, that there is noted
3 here one of the advantages of this particular site was:

4 ".... large buffer zone which extends
5 over 1000 m southward..."

6 Do you see that?

7 A. Yes.

8 Q. And at the bottom of the page:

9 "... the presence of an extensive buffer
10 zone.... which can be used for natural
11 on-site treatment of leachate."

12 I got the impression from those two
13 comments that what Morrison Beatty were talking
14 about surely were the NSP proposals put forward in the
15 early 1980s, because there there were these very large
16 buffer zones and so on?

17 A. That's true, but there would also
18 be buffer zones for the Azova lands.

19 Q. That was an example that didn't
20 really relate to the Azova lands, but on a page like
21 this when you interchange the words Site F with NSP, it
22 is not always entirely accurate, is it Mr. Bacon? Is
23 there any doubt that Morrison Beatty were commenting on
24 the NSP proposal or the NSP lands?

25 A. They were commenting on the NSP



1 lands, but the only one that is not directly applicable
2 in totality is No. 6. If you go through that there is
3 a large buffer zone which extends over 1000 metres
4 southwards, the direction of lateral leachate
5 migration, and that migration would come even from the
6 Azova lands and that applies to both. The absence of
7 aquifers and private water supplies south of the site;
8 that applies to both. The natural poor quality
9 groundwater; that applies to both. The low
10 permeability of shale; we knew it was shale up there.
11 The presence of a shale resource. The only one is six,
12 which is presence of landfills on both sides, and it's
13 not on both sides of the Azova lands.

14 Q. I think the confusion is that we
15 may have gotten off on a tangent. You are comparing
16 this set of advantages with and without Azova and I'm
17 saying this is really NSP proposals and not Site F.
18 For example, let's look at the first one, the large
19 buffer zone extending south. I took that to be this
20 area here, mentioned in a number of the NSP documents
21 as being sort of the 1000 metre area which provided the
22 southward buffer; is that correct?

23 A. No, that's not 1000 metres, it's
24 only 600 metres from there to there, so we are talking
25 about the area all the way down to the railway line and



1 including that small piece, because that is 900 metres
2 from the south end of our southerly cell here to the
3 bottom and so it included all of that land.

4 Q. Are you suggesting the large
5 buffer zone in here included no portion of what is now
6 Site F?

7 A. Oh it did, yes. I am saying it
8 included some land in the bottom there, and it makes
9 the dimensions slightly less.

10 Q. But the point though is when we
11 look at a page like this, we read factors applicable at
12 Site F, really Morrison Beatty, and this is something
13 we have to be careful with throughout your report, but
14 it is really commenting on the NSP proposal and to the
15 extent there are differences, we should be aware of
16 them; is that fair enough?

17 A. One could hardly help but be aware
18 of them because the Region's consultants did report on
19 the whole site.

20 Q. Fair enough.

21 A. But most of these apply equally.

22 Q. Let's look at one example that
23 doesn't. On page 3, or paragraph 3 of your executive
24 summary, do you see the statement:

25 "The nearest residence to the area



1 proposed by NSP for landfilling, is over
2 900 metres distant...".

3 A. I explained that this afternoon
4 and said that that was taken from the northerly edge of
5 the fill area of NSP, whereas for Azova it's 600
6 metres.

7 Q. That is my point.

8 A. I'm sorry, 500 approximately.

9 Q. That is the point I am trying to
10 make and I hope you can agree with it. At times, your
11 report continues to be focused on the NSP land and not
12 necessarily to the specific proposal the Region was
13 suggesting for this property, and that is one example?

14 A. Oh yes, but I would say now that
15 my evidence is on that specific matter that only in the
16 very slightest degree, and that is in respect of visual
17 aspects, will it change.

18 Q. As I said, I will take you through
19 what I think are the differences between the NSP
20 proposal and Site F, and I think there are more than
21 that. I just want a basis of understanding. Am I
22 reading your report correctly that it does at times
23 speak from the perspective of the NSP lands rather than
24 Site F?

25 A. Correct.



1 Q. And where reference is made to the
2 technical studies done by your firm that were a basis
3 of this report, those technical studies were also
4 focused on the NSP lands only and not on Site F?

5 A. They were one of the technical
6 bases because I did read, and so did Bob Tait, all the
7 hydrogeological reports.

8 Q. I didn't suggest you didn't.

9 A. You said "the technical basis" and
10 that is not correct, because it is one of the technical
11 bases.

12 Q. That was one of the bases along
13 with your review of the Region's technical documents
14 and your own observations?

15 A. Yes.

16 Q. That's what went into the report?

17 A. Yes.

18 Q. One of those cornerstones, if I
19 can call it that, were technical studies done in
20 connection with the NSP lands as opposed to Site F?

21 A. Correct.

22 Q. With that in mind, I would like to
23 turn to the first proposal and get into the specifics
24 of it and that was the proposal that you carried out
25 and were responsible for drafting in July of 1981 and



1 this is found at tab A of N-587?

2 A. Which one do you want?

3 Q. Tab A at Exhibit 587. Could we
4 look at your covering letter firstly to Mr. Farrow, Mr.
5 Bacon. Do I read the second sentence correctly that
6 the application was intended to cover both an amendment
7 to the Parkway Belt West Plan and the regs passed under
8 the plan?

9 A. If required. That was carefully
10 worded. We knew, because you chaps or Burlington had
11 told us that we had to make....

12 Q. I am not sure I was around then.
13 I might have been.

14 MR. LEDERER: I don't think Mr. Tzekas
15 is that old.

16 MR. TZEKAS: I meant involved in the
17 case.

18 THE WITNESS: We knew we had to apply
19 for an amendment to the regulations and your people had
20 asserted by that time that we had to apply or we needed
21 an amendment to the Parkway Belt West Plan, so I
22 carefully worded that by saying it would cover, but we
23 didn't actually apply for an amendment to the Parkway
24 Belt West Plan.

25 Q. The reason I put this to you was



1 because I noticed a shift in language between this
2 particular application and the second one made in
3 January of 1982. Can I turn you to page 12 of the
4 exhibit and it is page 4 of the planning report?

5 A. Yes, the second paragraph, last
6 four lines and not quite so elegantly phrased, I
7 slipped. There is perhaps -- it says that an
8 amendment to the Parkway Belt West Plan is required and
9 we still did not consider, and that is amply
10 demonstrated by my letters protesting we didn't, but in
11 this we had sort of made the assumption that we were
12 being asked to amend the Parkway Belt West Plan but we
13 continued to fight even though we were being pushed
14 into it. I don't think there is great significance
15 because we said the establishment was not considered
16 and it certainly wasn't by Burlington and we did
17 consider it a permitted use within the present
18 designation of the plan and there shouldn't have been a
19 period there, and I should have written in and in
20 hindsight it is easy to say, but I should have written
21 "and if so an amendment to the Parkway Belt West Plan
22 is required," but I didn't write it that way.

23 Q. The concern I have is that I am
24 concerned by July of 1981 with what opinions Burlington
25 had expressed on this point?



1 A. I had them in spades from Gary
2 Goodman, your planning director which whom I had met
3 and had discussions on several occasions about our
4 proposal, because after all it was in your
5 municipality, in the City of Burlington, so I naturally
6 talked to Mr. Goodman.

7 Q. So your views about the City's
8 position at this time come from your discussions with
9 Mr. Goodman?

10 A. Yes. We hadn't at that time had
11 extensive discussions, as I did later, over the next
12 winter, with the Council and I think also later with
13 the Waste Management Committee.

14 Q. Now I would like to refer you to
15 one of the key -- what I consider to be one of the key
16 differences between the proposal NSP was putting
17 forward and what is presently being put forward by the
18 Region. In your letter to Mr. Farrow you indicate that
19 the proposed site, landfill site, is to be established
20 and operated concurrently with the shale quarrying
21 activities and as an integral part of the
22 rehabilitation of the pits?

23 A. Yes.

24 Q. I take it sir that that particular
25 perspective, that somehow these two uses were going to



1 be integrated, I assume I read the documents correctly
2 that that was one of the very basic principles upon
3 which NSP was putting forward its application?

4 A. I don't know if one would call it
5 a basic principle. It was one way or perhaps the way
6 in which the operation would be carried forward by
7 excavating shale and by using such quantities as were
8 required by NSP's operation for commercial purposes,
9 and then weathering the shale in order to use it as
10 cover material in berms and for other things.

11 Q. In fairness, turn to page 14 of
12 the report please. This was just one of the proposals
13 or options available to NSP, it was the basis upon
14 which NSP founded its application, was it not? Look at
15 paragraph 9?

16 A. I just said that, "NSP has been
17 and will in the future extract shale on the site in
18 accordance with its licence."

19 Q. "Pursuant to the provisions of
20 this Act, NSP is required to rehabilitate the quarry"
21 and it was your planning opinion that those two
22 operations could be meshed and carried out
23 concurrently?

24 A. That is correct.

25 Q. Am I right in thinking, Mr. Bacon,



1 and I can take you through the rest of them, but am I
2 right in thinking that that particular focus, the idea
3 of an integrated operation which would result in both
4 the extraction of shale for its own shake and the
5 integration of that with landfilling activities was a
6 constant theme carried out in NSP's applications?

7 A. Yes. I think perhaps the focus
8 you are putting on it is more than was really intended.
9 The extraction of shale as has been stated on a number
10 of occasions was relatively intermittent. It was still
11 a resource that was available to NSP and it certainly
12 did intend to carry on, as we set out in that
13 paragraph.

14 Q. If I misread this, it's because I
15 misread the plain language. I got from these
16 applications a history indicating that NSP had mined
17 this site for some eighty years and was intended to
18 continue to do so and its proposal for landfilling was
19 a part of that operation. Are you saying that the
20 report doesn't read correctly?

21 A. Oh no. I am just saying that to
22 place the importance on it that would indicate that it
23 wouldn't work or if they didn't mine the shale it
24 wasn't an appropriate proposal I think is
25 misinterpreting it. I believe, and I believed then and



1 our engineers believed then and we were certainly
2 informed by our client, that that would work and it
3 certainly does operate at the Walker Bros. quarry which
4 we have done all the approvals on and which is a
5 landfill site, and it is working satisfactorily there,
6 that this could go on, but what I am trying to say is
7 that it doesn't mean to say that if shale quarrying
8 doesn't go on there for one reason or another that the
9 resource is easier collected from somewhere else, and
10 that that....

11 Q. I don't recall suggesting that.

12 A. would reduce the desirability
13 of the site for landfill.

14 Q. I don't recall suggesting that?

15 A. I don't want to have that
16 impression around as we start this discussion.

17 Q. I am not asking -- I assume I will
18 get a time to argue what the significance of all of
19 this is, but you will agree with me that the NSP
20 proposals were, beginning with this proposal, all
21 founded on the notion of an integrated operation?

22 A. I would prefer not to use the word
23 founded, but say it included the idea of an integrated
24 operation.

25 Q. Did they include any other idea



1 and was there any other form of proposal put forward
2 other than what I call the integrated scheme?

3 A. The basic idea is correct and
4 there is no denying that, but if we had said we
5 expected X thousand tons of shale to be extracted and
6 all these quantities were set out, then that would be
7 one thing, but it isn't the most important. You
8 started off by using foundation, and I don't think it
9 is as important as foundation. I don't think -- while
10 it is integrated, more importance should be given to
11 the fact there is shale there and if we get it out we
12 thought it was a good idea and we still think it's a
13 good idea.

14 MR. TZEKAS: I can accept that
15 characterization. At this point I would like to go
16 into some of the details and this is as an appropriate
17 time as any for us to break unless you would like me to
18 continue, I would be happy to.

19 MR. LANCASTER: No. I would like to
20 break too. You think you will finish by noon tomorrow?

21 MR. TZEKAS: I am hopeful, sir.

22 MR. LANCASTER: We will start at 9:30.

23 MR. LEDERER: Before you rise, this is
24 fairly unusual, but at a time when I was more
25 optimistic about how quickly this would go, I set up an



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Toronto, Ontario

24866

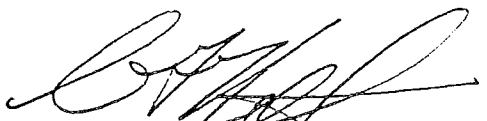
Bacon, cr ex
(Tzekas)

1 appointment on another matter, so I won't be here
2 tomorrow morning and Mr. Hodgson will be here, but I
3 mean no disrespect to Mr. Bacon or the Board, but that
4 is just the way things have worked out.

5 MR. LANCASTER: 9:30.

6 -- Adjournment (4:30 p.m.)
7
8
9

10 CERTIFIED CORRECT:

11 
12 C.F. Nethercut, C.V.R.
13

14 (Page 24900 follows)
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