

EDUCATION AND HEALTH STANDING COMMITTEE

INQUIRY INTO THE CAUSE AND EXTENT OF LEAD POLLUTION IN THE ESPERANCE AREA

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
THURSDAY, 7 JUNE 2007**

SESSION ONE

Members

Dr K.D. Hames (Acting Chairman)

Mrs D.J. Guise

Mr T.K. Waldron

Mr M.P. Whitely

Dr G.G. Jacobs

Mr P. Papalia

Hearing commenced at 9.03 am

SCOTT, MR PATRICK NOEL

Managing Director, Magellan Metals, examined:

WATTERS, MR TREVOR JOHN

Consultant, Magellan Metals, examined:

The ACTING CHAIRMAN: The cameramen will be allowed to take pictures for the first five minutes. I hope that all the cameramen are aware that they cannot pass the rise on either side of the committee room.

This committee hearing is a proceeding of Parliament and warrants the same respect that proceedings in the house itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as contempt of Parliament. Have you completed the "Details of Witness" form?

The Witnesses: Yes.

The ACTING CHAIRMAN: Do you understand the notes at the bottom of the form?

The Witnesses: Yes.

The ACTING CHAIRMAN: Did you receive and read an information for witnesses briefing sheet regarding the giving of evidence before parliamentary committees?

The Witnesses: Yes

The ACTING CHAIRMAN: Do you have any questions about your appearance before the committee today?

The Witnesses: No.

The ACTING CHAIRMAN: Please state the capacity in which you appear before the committee.

Mr Watters: I am now a consultant for Magellan Metals.

The ACTING CHAIRMAN: A consultant?

Mr Watters: I am a consultant for Magellan Metals. I retired from Magellan Metals.

Mr Scott: I am the managing director of Magellan Metals.

The ACTING CHAIRMAN: We have called you back as a result of having time to develop our thought process and to formulate further questions. We have quite a few questions to ask, so we will try to progress proceedings as quickly as possible. Do you want to make an opening statement before we proceed with our questions?

Mr Scott: Yes, Mr Chairman. We realised from the list of questions that were sent us that there were some things we could do in terms of putting information together, particularly with respect to box-hold vessels and MSDSs. We are quite happy to provide the committee with the documents that we have been working on. We will do so, if you wish. If it is useful, I think it would be worth me taking you through some of the issues relating to box-hold vessels straight up rather than waiting for questions.

The ACTING CHAIRMAN: The difficulty with that is that we would need to cull the questions we want to ask on exactly those issues. Our first questions relate to MSDSs. Obviously we would

be happy if you wanted to hand over that opening statement at some stage. We do not have time to read it now. We have a preliminary question that does not relate to that. We want to know exactly what the chemical symbol is for the lead carbonate that you are exporting. Is it PbCO_3 or some other version, because there are other versions?

Mr Scott: We are exporting a concentrate. It is a mixture of different metals. The prime mineral which conforms most of our concentrate is lead carbonate. Is it PbCO_3 ?

Mr Watters: I think you might have seen one that is a hydrated version or a mixture of PbO . I believe ours is straight PbCO_3 .

The ACTING CHAIRMAN: I refer to the material safety data sheets. In its material safety data sheet required for the purposes of shipping on 12 April 2005, Magellan identified its lead carbonate as environmentally hazardous material. Why did Magellan not identify the lead carbonate at its mine site and for the purpose of road and rail transport as a dangerous good?

Mr Scott: I think the document that we will provide you will take you through the number of material data sheets that were provided to different people at different times. In essence, we provided material data sheets identifying the material as a hazardous dangerous good to both the Department of Environment and Conservation, the port and Brambles over a period. The first one we handed out related to lead carbonate as a chemical and later on we had a material data sheet that was done specifically for our concentrate.

The ACTING CHAIRMAN: Therein lies the issue. We have three. We are aware of one other that we do not have that is different yet again with different classifications.

Mr Scott: I think it is important that we come straight to the nub of this. We have always recognised that what we are shipping is lead carbonate. We have always known that it is a dangerous good and that it is poisonous and toxic. Whether it is a dangerous good class 9 or class 6 is the only thing that has been moved in terms of the information the company requires.

[9.10 am]

The ACTING CHAIRMAN: Surely there is a big difference between them.

Mr Scott: Actually, there is not really. If you look at the material data sheets that were provided, there is a thing about the classification, but there is also lots of information about handling the product, what to do with a spill if you spill it and all the other things that go with that. Those things are absolutely common. The only real difference in terms of the way that this thing is presented is if you transport the stuff at a class 6.1, it has a sign with a skull and crossbones; as a class 9, it has a different sign that states "hazardous dangerous goods". It is not something that is really hugely material in our view. We want to get it right, but the important thing for us on these material data sheets is that they are safety tools for people who receive the product telling them how to handle it, and those things do. The class 9 or the class 6.1 sheets are telling people pretty much the same things to do, such as the same sort of safety gear to wear; all the same things. It goes down to the fact that they both talk about the same packing group, so they are both packed in this packing group class 3.

The ACTING CHAIRMAN: What do you say to comments made to us by the port authority yesterday that the one you gave to them classified it as a less hazardous good, and that they would have handled it differently if they had been aware that it was a class 6.1?

Mr Scott: To be frank, I find it hard to believe. The material data sheets that we have produced over time are all substantially the same - they require the same handling. The material data sheet is five, six pages. There is a small bracket at the top, where you put your classification and it fits into these various UN codes, but the key thing is that this is lead carbonate; it needs to be treated as a toxic substance. They knew it. I do not believe that they would have handled it any differently, personally. The answers are that is the facts as we see them.

The ACTING CHAIRMAN: What do you say, then, to DOCEP's comments, made the day before yesterday, that its belief is that the lead carbonate would have been managed differently if it was classified as a dangerous good; that that has now happened; and that, in effect, you advised them incorrectly at the first meeting when you first handed in your MSDS?

Mr Scott: Mr Chairman, I am actually rather confused by DOCEP's evidence. We have never said that this is not a dangerous good. Class 6, class 9 - it is all in the dangerous goods classification; it comes in this code. The advice that we have had is that in either instance you must treat it as a dangerous good. To be frank, I am really rather confused by what came through from DOCEP.

The ACTING CHAIRMAN: DOCEP said that there is quite a simple test to be done to put it in the correct classification: a solubility test using hydrochloric acid. It is fairly clear and simple and straightforward. When you did that test just recently, that meant it was automatically classified as a 6.1, was it not?

Mr Scott: You are right that there is a test. It was not a test that is particularly simple, but it is a test that was carried out. I think part of the issue is that if you look at lead carbonate in a standard chemical textbook, you will see that it tells you that lead carbonate is insoluble.

The ACTING CHAIRMAN: The test is solubility in hydrochloric acid.

Mr Scott: Exactly. At the instigation of DOCEP - very, very recently - we did take out a series of tests using a dilute hydrochloric acid, and yes, it is soluble and it does pass into the 6.1. However, what I would say is that would have made absolutely no difference with any of the practices and procedures that we had in terms of how we handled the product, how we presented it, or anything, other than the placard and so forth.

The ACTING CHAIRMAN: When you first put in your MSDS and classified it as a class 9, DOCEP questioned that at the time, did it not?

Mr Scott: I do not believe so. My understanding is - we have, I guess, had the luxury of a day or two to look at our documentation - that we initially sent to both DOCEP and the Department of Environment and Conservation an MSDS that classified it as a 6.1. It was done on the basis of "here it is: an MSDS for lead carbonate precipitate", which is what was able to be picked off, I assume from the net at that time, as a suitable test. In fact, part of the documentation for the section 45 amendment to our licence to move from Geraldton down to Esperance that was sent to the DEC at the time, in fact by Trevor, attached that MSDS that described the thing as a 6.1. We have got the documents for you.

The ACTING CHAIRMAN: We have got the documents.

Mr Scott: If you look at a standard lead carbonate MSDS, it talks about a white powder. Our concentrate, as you would know because you have seen it, is black. It contains other things. It is of a different size distribution to the chemical lead carbonate that you would pick up if you bought a bottle of the stuff in the street. We went to a firm in America that specialises in MSDSs. We asked them to come up with a suitable MSDS for our product and they came back with a MSDS that classified it as a class 9. I believe it was on the basis of solubility, in terms of that it was not soluble, but I am not really sure. We took that MSDS that arrived here to Dr -

Mr Watters: Brian Galton-Fenzi.

Mr Scott: - who is specialist toxicologist, a bit of a lead specialist, who reviewed it particularly with regards to the health and safety information to make sure that it was appropriate for people who were going to handle lead carbonate. I mean that is what we are interested in: are we handling this stuff properly? He modified it and changed it, and having got that, we adopted it.

The ACTING CHAIRMAN: So why did you go to so much trouble if you said there was no difference in the handling between the two?

Mr Scott: Why? Because of sending someone off an MSDS. Primarily part of what we were doing was sending it to overseas customers to say "Look, here is our product", so it was something that you open up. The MSDS says that this is a white powder and, of course, it is something black and soggy and whatever else - it was not appropriate. We needed something that was specific and dealt with material that we were producing. Now initially before they actually had a mine running, and before they had pilot material, they did not really know what they got. That is why the initial application was done on the basis of the bottled white product. However, you would be asking me "Why do you say that it is white, when it is black?", if we actually stuck with what we had before.

The ACTING CHAIRMAN: You said that DOCEP had not called you in, but in its evidence, it said that it called you to a meeting. I am fairly certain that DOCEP called you to a meeting to discuss it, and went through it. It was decided in the end that that original classification, a miscellaneous hazardous good was acceptable; yet, at the same time, for your shipping you had classified it as the equivalent of a 6.1.

[9.20 am]

Mr Scott: My understanding from the evidence that we managed to put together was that DOCEP certainly asked us to come to the meeting, but that was only a few weeks ago. We have no record of a discussion with DOCEP early in the piece on the classification of this.

The ACTING CHAIRMAN: We might follow that up later, because we are chasing some information from DOCEP. Can you just go through the dates of the different MSDSs, so we can have them for our records?

Mr Scott: I can, and as I said, I will provide the committee with a copy of this statement as soon as it is appropriate to do so. We sent an MSDS to the DEC attached to an email dated 11 August 2004, and that MSDS was part of the supporting information that supported this move from Geraldton down the Esperance. That classified the thing as a 6.1. We subsequently engaged a company, Chemical Associates Inc of the United States, to provide us with a specific MSDS for our product. That was finalised, if you like, after input from Dr Galton-Fenzi and so forth, on about 26 May 2005. We also sent - I learnt that perhaps that was not provided in evidence - copies of that MSDS to the port and to Brambles, and we have copies of the information. Most recently, on 23 April 2007, after doing the testing we were asked to do by DOCEP, we reclassified the material based on the solubility test from a dangerous good class 9 to a dangerous good class 6.1, which is actually a lead compound soluble. Just on that test, we had to take this stuff and get it tested in an accredited laboratory, which we did at SGS.

The ACTING CHAIRMAN: SGS - is that the one in America?

Mr Scott: No, SGS is a laboratory in Australia that carries out test work for companies. It is accredited for testing dangerous goods, but it does not have specific accreditation for carrying out the solubility test. We had a lot of trouble, and in the end we found a laboratory that actually did this test as part of the suite of tests it said it was accredited to do.

The ACTING CHAIRMAN: The committee will show you a copy of one and ask you which one it is.

Mr Scott: For that I apologise. This is an MSDS that was put together from the American data. We went back to an Australian firm and recalibrated it, not in terms of changing the content, but the layout more than anything else, to make it more standard as a compound and as an MSDS sheet. That was recently done, in March 2006. We really do not see that as being any form of change other than -

The ACTING CHAIRMAN: Did they retest it?

Mr Scott: No.

The ACTING CHAIRMAN: So they just redrew the testing that had been done in America?

Mr Scott: My understanding is that they were asked to take the prior MSDS that was done by the American firm, look at it, and make it so that it complied with their database-type system - if you like, turning it into a more appropriate document.

The ACTING CHAIRMAN: If it had been classified correctly in the first instance by DOCEP, would that have changed the transportation procedures or any other procedures along the route?

Mr Scott: It should have changed the markings that went on the trucks. It should have changed the markings that were put around storage areas, where those storage areas were required to be marked for dangerous goods.

The ACTING CHAIRMAN: That is the skull and crossbones?

Mr Scott: From a sign that says "Hazardous dangerous goods" to a skull and crossbones sign with "6.1" on it.

The ACTING CHAIRMAN: Do you think that might have made the port workers more aware of issues relating to lead dust?

Mr Scott: I think, particularly having been through the port's visitor induction and knowing the sort of awareness programs that we conduct on our mine site, that all the people involved with handling this product were very aware of what it was and what the effects of it were, and that was very clear in those MSDSs. Anybody who is working with these sorts of products should and really must be educated on the details of those MSDSs in terms of the ways in which these products should be handled to be handled safely. Frankly, signage will perhaps draw a little more attention to something if it is sitting somewhere, but it should not make a material difference in any respect to the way this stuff is handled.

The ACTING CHAIRMAN: Would it surprise you to know, then, that after the committee had been through that induction and went into the lead shed, I saw one of the workers touching the lead dust and I did the same. When I took the gloves off, I had lead dust covering my fingers. Would it surprise you to know that? Do you think I would do that if there had been a skull and crossbones in evidence?

Mr Scott: I think that if they gave you a pair of gloves and that occurred, then something was very wrong.

The ACTING CHAIRMAN: They were all the same. All of the gloves were the same. Would it surprise you to know that from the evidence we heard from the environmental officer from the port yesterday, we found out that dust blowing off the conveyer belt - which was not fully enclosed - into the port and into the water was a common occurrence?

Mr Scott: Yes, it would surprise me to hear that it was a common occurrence. It would particularly -

The ACTING CHAIRMAN: Or that it occurred at all?

Mr Scott: Exactly. It would particularly surprise me. We have all been through what those things say. A dangerous good class 9 is a dangerous good, and in particular, it is labelled as toxic to the environment.

The ACTING CHAIRMAN: The committee was given off-the-record evidence from workers at your mine that at one stage, when a loader full of kibbles broke down, a front-end loader was used to load the ore into the kibbles, but because it was only a small front-end loader, it would not properly fill the kibbles, and a person had to get into the kibble and shovel it to level it out. Would that be done if you regarded it as a dangerous good?

Mr Scott: We always regarded this as a dangerous good. There have been no thoughts ever within our organisation that this stuff was not hazardous, dangerous or poisonous.

The ACTING CHAIRMAN: What about that example?

Mr Scott: If that occurred, particularly if there was exposure to the person involved, it should not have done.

The ACTING CHAIRMAN: They had full gear on.

Mr Scott: If they are wearing appropriate protective equipment - really appropriate; in other words, they cannot be contaminated because they are sealed in a space suit - then I am less concerned.

The ACTING CHAIRMAN: It was just standard personal gear that the committee wore when it went there.

Mr Scott: I would very much doubt that.

Mr Watters: It would be a full suit.

The ACTING CHAIRMAN: Are you aware of the incident I refer to?

[9.30 am]

Mr Watters: No, I am not. I know of the loading of the kibbles.

The ACTING CHAIRMAN: The machine broke down.

Mr Watters: Like Pat has just said, if people were in the complete PPE gear, I do not see that that would be a risk because that was, I would hope, a one-off event.

Mr Scott: If they had one of those helmets that runs through a filter and they were totally enclosed, it would be very unpleasant but the key thing is there is to be no exposure of the people to the product. That is very clearly the way that we run our operation.

Mr T.K. WALDRON: If it is classified as a 6.1 dangerous good, it would have the skull and crossbones. Would that be on the kibbles as well?

Mr Scott: Yes.

Mr T.K. WALDRON: When the kibbles are at Leonora, could the general public walk past it? I wonder about the importance of the skull and crossbones to someone like me, who does not know the intricacies of it.

Mr Scott: That is where that sort of signage is more useful. I do not think that the area at Leonora is open to the general public in any way. However, having said that, the kibbles as they are now, should be marked as dangerous goods anyway. The skull and crossbones signage looks different from a sign with crosses on it.

Mr T.K. WALDRON: Coming from a country town, I am thinking about kids who go out walking. When the committee looked at the kibbles, we saw them sitting in the open at Leonora. Kids ride bikes etc, and maybe seeing a sign with skull and crossbones is different from having to read -

Mr M.P. WHITELEY: It was fenced was it not?

Mr T.K. WALDRON: I am not sure whether it was fenced.

Mr Watters: It certainly is fenced but I take the member's point. Kids will get in anywhere. The gates are quite large where the trucks come in and out.

Mr P. PAPALIA: Patrick, when you last gave evidence in Esperance, I asked you a question relating to the fact that you knew that this substance was toxic, or was very dangerous, and you also knew that nickel had been contaminating the town from the same loading system that you intended using for lead and yet you went ahead and used that same system. I asked you why you did that and I believe that at the time your response was that you believed the lead would handle differently from the nickel. Is that correct?

Mr Scott: I cannot recall exactly what response I gave. I think I said something to the effect that I suspected that different forms of concentrate may behave differently. The factors as we see them

are that at the time with the work that was done and the investigations that were carried out and what the port told us it was going to do, we believed that in the right conditions this material could be safely loaded out through that port facility. I would go on to say that having seen what has occurred, obviously that was not the case.

Mr P. PAPALIA: Your health and environmental management plan, which was part of your proposal, had essentially included that you had to produce a dust management plan. Ultimately, that was produced by the port. I understand that. Was the obligation not on you as part of your proposal to assess the dust management plan and to determine whether it was appropriate?

Mr Scott: Yes. I think we went through this ground last time. We used and relied upon external consultants to assist us. We relied in particular on the Riseborough report, which is in the document.

Mr P. PAPALIA: The Riseborough report identified flaws in the system and recommended changes being made to the loading system prior to the export of lead.

Mr Watters: The Riseborough report came out well after we had made an assessment of the port's veracity in terms of dust handling. In discussions with Colin Stewart, Shelley Grasty and others at the port - this is around mid-2004 - the understanding then was that there had been some minor excursions of nickel dust off the lease. The monitoring system was picking that up and the port had a series of steps that it was taking to put all this in place so that this was not going to happen any more. The port was particularly concerned at that stage about the odour from the nickel concentrate. At the time, there was enough information given to us in terms of the dust management plan, the auditing of that plan by some other people and what they were going to put in place in terms of additional dust monitoring sites.

Mr P. PAPALIA: Did you read the dust management plan for the exporting of the lead?

Mr Watters: Yes.

Mr P. PAPALIA: Under the dust control measures and the lead carbonate heading, it says that lead carbonate is a new product to be handled by the port authority and that this product would be handled within the same system currently used for the nickel concentrate.

Mr Watters: Yes.

Mr P. PAPALIA: Are you aware that the nickel concentrate was allowed to escape?

Mr Watters: As I just said, it was explained to me and I saw some readings. They said they had cleaned out their rainwater tanks and that they had put steps in place and they had documented those steps to correct that situation because they did not see that it was acceptable to let nickel dust fly around the town, and they certainly were not going to let lead escape. That was the logic back in 2004 when we chose to go down that route. The Riseborough reviews came subsequent to that.

Dr G.G. JACOBS: Patrick, you took us through the process of these classifications but I draw attention to the US chemical safety classification of 26 May 2005 where it was a grade 9 classification. You said that you gave those to the port and to Brambles Industrial Services. We actually heard from Brambles yesterday that in fact did not received that report and that it did its own Chem Alert DG code classification. That is the first issue. The second issue is that you are obviously aware of the 9 000 tonnes on the wharf at the present time in Esperance. You have had the classification after the meeting with DOCEP and it is now classed as a 6.1 dangerous good as at 23 April this year. Of course, the out loading of that 9 000 tonnes requires special out loading in double-layered bags etc for the export of that product from Esperance. The question we asked the port authority is: if it was actually classed as a 6.1 dangerous good, would the product have been handled differently? Contrary to what you have said, the port authority said, "Almost definitely, yes, much more stringently". Is that stringency the same as putting it in bags, as you now propose to do to remove the 9 000 tonnes from the port?

Mr Scott: To start at the beginning, we have certainly got on file sending that MSDS to Brambles at the same time as it was sent to the port. My understanding was that it had developed its own MSDS but I am a bit perplexed as to why. I am quite sure that it would have come up with the same handling and everything else that we had.

The ACTING CHAIRMAN: Can I just say that there is an obvious difference between the two classes in terms of PPE? The lesser class requires a class P2 respirator whereas the class 6.1 require as class P3 respirator, which is obviously much more complex and efficient. There is a difference in the way those goods would have been handled right there in the PPE.

Mr Scott: I think our practices were such that we were going to the higher class anyway in regards to people handling it.

The ACTING CHAIRMAN: What class respirator were you using at the mine site?

Mr Watters: I cannot tell you.

Mr Scott: I would have to go back and get that information.

Dr G.G. JACOBS: I think what the Esperance people are asking is that if the 9 000 tonnes that is on the wharf for export is being handled in such a way as to be put in double-layered plastic bags and it is now a dangerous good and the port is saying that it is a class 6.1 dangerous good, would it have been handled much more stringently? Why had you not been doing that all the time? You have said that in fact it would not be any different.

[9.40 am]

Mr Scott: Quite frankly, it is a dangerous good whether it is a class 9 or a class 6.1. All the ways we handle this, the packing class is the same. If we want to send the material out as a class 9 good it goes in exactly the same packaging as a class 6.1 - packing group 3. The same bags are used, sealed in the same way and everything else. The same is true for bulk handling material. If it is appropriate to move it on the systems that were there without the dust going everywhere, then as far as I can see there is really no material difference other than the solubility test puts it into a different UN number and a different code, and, yes, it needs to be signed differently. From the company's perspective, we want it done correctly. We have no vested interest in saying that it is a class 9 or a class 6.1. There is nothing particularly useful for us in terms of its sitting on one or the other. We want people at the port, people who transport it, our own workers to be absolutely aware that this stuff is toxic and dangerous.

Dr G.G. JACOBS: Does 6.1 require it to go in bags now where it previously was not?

Mr Scott: No, class 9, if you want to send it somewhere, you have to pack it in a bag.

Dr G.G. JACOBS: That has not been done.

Mr Scott: No, because it has been handled as a bulk material.

The ACTING CHAIRMAN: We will get back to some of the questions on the list. I will read out this question because it is a little complex. How did Chemical Safety Associates conduct its analysis, and did you actually provide it with a sample? You might have said this before, but we just want to run through it.

Mr Scott: It is within this document that we will give you. They were not provided with a sample. They were told the material was lead carbonate and they were given a list of the ingredients that went into it.

The ACTING CHAIRMAN: We have a copy of an email of 19 April 2005 from Dr Brian Galton-Fenzi to Mr Watters stating that the Chemical Safety MSDS was a generic MSDS and "clearly inappropriate". He states that the MSDS describes the lead carbonate as odourless when it is not - it smells of xanthates. That MSDS was not changed, was it?

Mr Scott: Oh yes, it was adjusted.

Mr Watters: Yes, when I sent that generic one - can I just for a minute - that first MSDS was provided for the Amdel laboratories in Adelaide prior to our pilot plant testing, when we had a sample of only seven per cent lead ore. That was the document that was used by them to manage their occupational health and safety internally in the laboratory. It was the best that was available at the time.

Dr G.G. JACOBS: That is in August 2004?

Mr Watters: No, this is back in 2000, when the original pilot plant test work was done.

The ACTING CHAIRMAN: Can you tell us about the American laboratory and the American test? There are mutual recognition procedures in place for companies overseas. Were they an accredited laboratory?

Mr Watters: Oh yes, they were asked to assess a sample that was sent to them on the basis of, I think, Canadian legislation, US legislation and any relevant international -

Mr Scott: But was a sample sent?

Mr Watters: I would have to check that. We did want to send a sample to the States, that is right, for filter testing.

Mr Scott: I do not think it was done for the MSDS. I think there was a list of materials that were within the concentrate. That is certainly the way the documents we have got here -

The ACTING CHAIRMAN: That is an accredited company recognised by Australia?

Mr Watters: It was certainly picked to be accredited as far as importing into the United States.

Mr Scott: Part of the reason we had this done was for customers, particularly overseas customers. We had to give them an MSDS that was appropriate and picked up what the product was, particularly the previous one, which said it was white and it is black, so it needed to be changed.

Dr G.G. JACOBS: Would there have been any concern, Patrick, that in fact you were getting a US classification and there might have been a question about whether that should have been an Australian-appropriate MSDS form?

Mr Scott: There could have been, Graham, but to be frank the Australian dangerous goods code is very complex, but it does mirror a UN dangerous goods code and these UN numbers that you see that relate to different products.

Dr G.G. JACOBS: Is there a problem with that?

Mr Scott: No, but it is complex, as I say. It is relatively easy with hindsight to see why people came to the conclusions that they did and, if you like, where things could have been done differently.

The ACTING CHAIRMAN: I just want to talk to you about those documents you have just been given, which is a little email trace. It is from David Thick, who works for you, does he not?

Mr Scott: He did.

The ACTING CHAIRMAN: He did at the time. It is to Lindy Nield, who is the senior scientific officer, occupational hygiene, Department of Consumer and Employment Protection. She is asking about what sort of product it is, saying -

I was wondering about the concentrate.

If the concentrate is 60-70% lead carbonate, with about 12% water, do you know what the remaining 20% is comprised?

Also, do you have a dangerous goods licence to transport it?

The response from David is -

Our concentrate is 100% Lead carbonates, generally 63% lead, the remainder being carbonates.

The concentrate is not deemed to be a dangerous good, hence no requirement for a DG licence.

That surely is totally contrary to everything you have been saying.

Mr Scott: I have not seen this previously, I am afraid.

The ACTING CHAIRMAN: No. I presume you recognise that "mailto:David.Thick@site.magmetals.com" is one of your former staff. Just for the record, this is February 2006. The response was 19 January 2006. Again just for the record while you are looking through that, just so people know that DOCEP did not accept that, the response from Lindy Nield was -

Have you had an assessment by a dangerous goods consultant to deem it not to be a DG? I am wondering if you have had expert advice about the Dangerous Goods Licence for transporting such large volumes of toxic concentrate around the state, or who has made the assumption you don't need one? ... and on what basis?

Mr Watters: We will have to check that.

Mr Scott: We will have to follow that through.

The ACTING CHAIRMAN: I will read the response back to her from her question. There is a lot of other material first, but it says -

With regards the classing of our concentrate as dangerous goods, it has been managements opinion following review of the Australian Dangerous Goods Regulations and current practice within Australia that to be classed as such, the concentrate must have the potential to cause immediate harm to people, property and the environment due to the possibility of a fire, explosion, release of flammable, or corrosive materials during a storage or handling incident.

This assumption is also based on industry practice, other organizations in Australia transporting lead concentrate without a DG class designated include:

- BHP Minerals Ltd
- Kagara Zinc Ltd
- Mount Isa Mines Ltd
- Normandy Ltd.

There is no explosive or fire risk associated with this product. Any harm is related to longer term exposures, hence its Hazardous Substance categorisation.

David Thick is the occupational health and safety coordinator at Magellan Metals. That email response is dated 3 February 2005.

Mr Scott: I am sorry, I certainly have not seen this previously.

The ACTING CHAIRMAN: It is not so much that I need you to have seen it previously; it is just I want you to comment on it.

[9.50 am]

Mr Scott: I have told you it is clearly an error. I would be surprised if the response that was received was accepted by DOCEP.

The ACTING CHAIRMAN: Apparently it was.

Mr Scott: As I say, I have not seen that before.

The ACTING CHAIRMAN: I come back to a question about xanthate. As you know there were lots of issues with nickel and xanthates. An odour from the lead carbonate material was the result of the xanthate.

Mr Scott: The odour from our concentrate is very minor. It is nothing like nickel. The nickel concentrate reacts with the xanthate and gives off an odour. Ours is a very passive compound and it really does not smell to any degree. The key thing with this is that any reports from the port that referred to odour did not catch our product. It was not an issue.

The ACTING CHAIRMAN: That is also my understanding. I wonder why there is a difference between the use of xanthate in nickel and lead carbonate?

Mr Watters: The reason is that with nickel concentrate, a lot of the non-nickel minerals are sulfur-rich pyritic-type minerals, and they will combust. Some of them will combust spontaneously. While they are stored in the shed they get hot to the point where you cannot put your hand inside the shed. It cooks the xanthate and in extreme cases it can be composed down into carbon disulfide, which emits a bad smell.

The ACTING CHAIRMAN: When was the product first tested by an accredited laboratory in Australia?

Mr Scott: Just recently. In terms of the solubility test, last month.

The ACTING CHAIRMAN: The outcome of the first test by an accredited laboratory in Australia was that it was classified as a class 6.1 dangerous good.

Mr Watters: Its solubility in water had been tested.

The ACTING CHAIRMAN: What is the UN classification for shipping as a result of the recent classification of the product by DOCEP as a 6.1 dangerous good?

Mr Scott: They are all packaged as a shipping package and are a class 3. Both a class 9 good and class 6.1 good are packaged in the same box.

The ACTING CHAIRMAN: They have different UN numbers.

Mr Scott: Yes, that is right. They have different numbers, but the dangerous goods refers to a packing group and they are both packing group 3.

Mr T.K. WALDRON: What does that mean?

Mr Scott: It means that if you pack them in bags you need to use the sorts of bags that we proposed to use in Esperance or wherever. They must be double-skin bags. It does not mean anything if the product is transported in bulk. If you want to send this stuff, you send it in a sealed bag of this nature. The bags must be able to withstand four times the weight of the material that is in it. You need very strong and secure packaging around the material.

Mr T.K. WALDRON: Does it mean that you should be transporting in bags rather than bulk?

Mr Scott: No, it does not, but it means that if you want to transport in bags you must use these bags.

Mr M.P. WHITELEY: If the product has to be sent in double-skin bags, the obvious implication is that the facilities in Esperance are inadequate, particularly if the product is falling from chutes above small ships. If you want to take the letter of the law, I understand what you are saying, but the implication is it is dangerous.

Mr Scott: All over the place people move lead concentrates in the same way that we were moving ours. It is not unusual and it is done in a manner that is carried out with great care to make sure that dust does not go all over the place.

Mr M.P. WHITELEY: The requirement to transport the product is that it must be packaged in a double-lined bag that is very robust. However, you are saying that it is common worldwide practice to let the product free-fall into the ship's hold.

Mr Scott: It is common worldwide practice to put it in ships' holds and transport it around the world. The free fall bit and letting the stuff blow around is certainly not contracted and it should not happen. I appreciate that. If you are asking about the bulk transport of this material, it is seen as quite normal.

Mr T.K. WALDRON: Is there a difference between lead carbonate and lead sulfide?

Mr Scott: I do not know because we have not done tests on the solubility of lead sulfide. We know that lead sulfide is less soluble than lead carbonate, but lead carbonate is insoluble in water. It is up to people to test their materials as they think appropriate.

The ACTING CHAIRMAN: Were your workers present during the loading of ships at the port?

Mr Scott: Some of our staff visited some of the ships that went out, but not every ship. We had a guy engaged in Esperance, Ron Padgurskis, who looked after a lot of different companies' interests as a local agent. He was there all the time.

The ACTING CHAIRMAN: I have deviated from my line of questioning. You have led me in a different direction. We were told by the port authority that once the ore had come off the kibbles, gone through the hopper and into the shed that is where it waited for the ship to arrive. When it was time to move the product from that shed onto the conveyer belt to the ship, while BIS had the front-end loader that was used for the loading, it was Magellan Metals and the port authority that looked at the material to see how dry it was and determine whether it needed to be mixed further; that is, make the decision as to the composition of that ore. I presume that you had someone in the shed doing that for each loading.

Mr Scott: No. In terms of our input to that, we would have had Ron down at the port and he would put his head in the shed if he was required to talk about the stuff. In essence, the information on what was going on and so forth as far as moisture was concerned would have flowed back to the guys at the mine.

The ACTING CHAIRMAN: Whose job was it to determine moisture levels prior to the product getting onto the conveyor belt to the ship? We were told that the port authority has the responsibility once the material hits the conveyor belt and it has equipment to measure that the product has the required moisture level for shipping. Until then, it is your responsibility to do that. Who did you rely on to determine the moisture level of the ore in the shed?

Mr Scott: We knew and kept records of the moisture level as the material left the site. We knew from Ron, the guy who we employed down at the port on a part-time basis, roughly what the actual texture of the material in the shed might be.

The ACTING CHAIRMAN: I thought you would have someone in the shed every time there was a load, but you are saying that is not the case.

Mr Scott: Not all the time that the stuff was being loaded.

The ACTING CHAIRMAN: I do not mean all the time it is loaded, but on each occasion it was loaded.

Mr Watters: Pat might be at cross-purposes. If you say a Magellan representative, then Ron Padgurskis was our representative. He would liaise with Taffy Davies from Brambles, and they would view the product in the shed. Then they would say, "This looks a bit on the dry side; this looks a bit on the wetter side. We will load this on top of the other and mix it in the shed to present a product to the belt." As Pat said, when they start loading, they have our moisture figures of the product that left the mine. It can change in transit, to some extent, depending on the weather, if it

is really hot. However, by and large, those two people make a call, when they see it in the shed, as to whether it is fit for loading. If they determine that a particular parcel might be too dry, they will liaise back with the mine, as Pat has said, and get some wetter material sent down to put on top of it to even out the moisture level.

[10.00 am]

The ACTING CHAIRMAN: We will go through that in a moment. We have quite a lot of questions about dust levels. I just want to finish this little segment on the MS data sheets. We have documents from the port that indicate that the MSDS provided to it from Magellan was the chemical safety version - we have talked about that before. Why was the Chem Alert sheet specifically developed for Magellan concentrate not provided to the port? The only one the port had was that first one that was given to them.

Mr Watters: That is news to me. I thought the one after Dr Brian Galton-Fenzi had reviewed it, that we had sent it to them.

Mr Scott: I think we did.

The ACTING CHAIRMAN: Can you check that.

Mr Scott: I think we are talking about the RMA thing that was done. In reality, that was prepared primarily for customers, but there is no material difference, I think, between those two.

The ACTING CHAIRMAN: Other than the different respirators, and the skull and crossbones! I want to talk now about what standards are required to transport the lead carbonate now that it is classified as a toxic good. Will the standards of transport be different?

Mr Scott: Yes, particularly the containers; they will be labelled differently, because it is a class 6.1 rather than a class 9, as we have discussed. The actual classification of the packing groups we have discussed at length. It is the same packing group. If we were going to send a bag of concentrate as a class 9, we would pack it in the same bag, but the labelling would be different.

The ACTING CHAIRMAN: The class 6.1 requires containers to be properly sealed. As you know, the kibbles have a tarpaulin across the top that is not sealed at each end. Do you believe those tarpaulins would still be adequate under a class 6.1 rather than a class 9?

Mr Scott: The advice that we have had from the dangerous goods specialist that we have engaged is that it is likely that they would be acceptable for moving that material, based on the size of the kibbles and so forth that are used. However, as you know, the proposal going forward does not contemplate that, so it becomes a bit of a -

The ACTING CHAIRMAN: Do you think it would be more expensive to move it under a different class?

Mr Scott: Frankly, no. As I have said, I was a bit surprised by that email that you showed me. I have always regarded this as a dangerous material. Whether it is class 9 or a class 6.1, effectively it needed to be handled in a form that was not going to get out into the environment. The whole idea of those kibbles is to basically seal the stuff up so that it does not get into the environment.

Dr G.G. JACOBS: We have inspected those loose tarpaulins. The tarpaulin is not sealed, is it? There is a potential for wind to get under the tarpaulin, particularly if it is on the back of a truck as it is moving, or a railcar, and for it to flap, so it is not actually sealed. Therefore, it really does surprise me to hear you say that if it is a dangerous good, you would expect it to be sealed, because in fact it is not. You have said that your independent person has said that that can still be consistent with the cover that you have on your kibbles now, which is not a seal.

The ACTING CHAIRMAN: Further to that, the issue is not so much about the product when it is going down to the port, but when it is coming back. The management of dangerous goods requires due care of the empty containers going back, because they still contain a significant amount of

product. To relate that to something like arsenic, if arsenic had been emptied out of those kibbles, and the containers were sent back - I gather they are sent back to the mine uncleaned, are they not?

Mr Scott: They are re-covered.

The ACTING CHAIRMAN: True, but they are not cleaned. Wind has more potential to get into the uncovered, moist product than it has into the remnant dust that is under the surface of the tarpaulin and is lining the containers. There would always be some dust left in the container when it is a wet product. It would not come out 100 per cent.

Mr Scott: We were very much of the view that it was an appropriate way to send the product out. In hindsight, with the problems that we have had, perhaps that is not so, but at the time we felt it was appropriate. I might say that the way bulk concentrate is moved is by using those sorts of practices. We have had plenty of people come and inspect. We have had DOCEP inspectors on site, and others. If they were not happy with any of these things, we would have fixed it, if that was required. The general view, and the consensus until very recently, was that we had no indication that any significant amount of our product was being lost anywhere on the transport route. Frankly, even today, I have not seen any information - even though I have written and asked for it - that says that yes, there have been leakages, with details of what has occurred.

The ACTING CHAIRMAN: We are not aware of any leakages during transport either, but people have said that during the trip back, they could see dust blowing from those empty kibbles.

Mr Scott: If that is the case, and if that had been brought to our attention, we would have done something different. It certainly is not something that we were aware of.

The ACTING CHAIRMAN: Am I am right in saying that the containers were not cleaned at the port?

Mr Scott: They were not cleaned at the port. They were emptied out at the port and sent back. If it was necessary to scrub the things at the port - if someone felt there was an issue there - that could have been done.

The ACTING CHAIRMAN: We have 50 minutes left, and we are up to only question 29. I want to get on to dust.

Mr P. PAPALIA: Earlier, when I asked you about your responsibilities regarding approval to ship the product, and the requirement for a dust control policy, you said that you believe that was met through the port's plan for dust control.

Mr Scott: Yes.

Mr P. PAPALIA: I am looking at a document that was sent by Trevor to the Department of Environment on 8 October 2004 regarding changing the port from Geraldton to Esperance. In that document, you reassure the department that there is little change in the overall proposal. Under proponent commitments - this is under the heading "ministerial conditions", it says -

Items 13, 14 of schedule 2 require Magellan to submit a Port monitoring plan. This aspect has been covered by the commitment of Magellan to participate in relevant Port's EMS which details all monitoring activities and have been deemed to be adequate for the monitoring of all relevant port and community conditions.

In making that statement, what was your understanding of your responsibilities with regard to assessing how adequate the system was?

[10.10 am]

Mr Watters: We reviewed their system, as I mentioned before, and with what we saw in terms of the assurances we were given and what we were told was going to happen and what had happened in the past, it was not only me, there were other people from the company listened to the same

dissertations, if you like, and we came to the conclusion that yes, Esperance port was on top of this issue and that we were not going to be faced with a problem.

Mr P. PAPALIA: So you felt that accepting their assurances was adequate to meet that requirement?

Mr Watters: No; on top of that we took it that their system had been independently reviewed, their dust monitoring, their static monitors were the same as had been used in a number of other lead areas, if you like, such as Broken Hill.

Mr P. PAPALIA: The independent review actually found quite a few flaws and recommended action. You did not monitor to see whether they actually took the action that was recommended?

Mr Watters: I do not recall that; no.

Mr P. PAPALIA: Because in your actual contract with the port, it also states that you have a duty of care to advise both your contractors and the port authority employees of all foreseeable and known hazards in handling and storing concentrate. It goes on -

For example, advising their contractors and the EPA of all known environmental and safety hazards prior to engaging contract services and leasing facilities through the provision of . . . MSDS . . .

What was your perception of your duty of care with regard to this whole process, assessing their capability to monitor and control dust, other than just listening to their promises and reading and knowing the fact that they had an independent consultant do a report?

Mr Watters: We made several visits, as I said, to that port. We also were instrumental in preparing their induction procedures. The induction that you were given down there would have been largely written by people from Magellan and modified to their circumstances. The issues of clean and dirty demarcations, that was all Magellan's input to their management strategy. I attended a workshop in late 2004, I think it was, where it was a round table forum with the operators, the employees and the management, and we went through all the procedures. Now, I was coming from a point of view of be it lead carbonate, be it lead sulfide, and I have got experience with both, you do not want either of them in your system. It is just the relative amounts that are the problem, because people working in a lead sulfide environment can, if they do not use the right equipment, get lead into their system.

Mr P. PAPALIA: Then getting that independent consultant, Riseborough and associates, to do their assessment of their system, was that a key part of your belief that confirmed in your mind that they were safe to transport lead carbonate through the port?

Mr Watters: Sure. That was their initiative. We did not have any input into getting Riseborough in, but we took part in it, as did the nickel guys.

Mr P. PAPALIA: I note that Riseborough assumed that the product was in an approved form.

Mr Watters: Yes.

Mr P. PAPALIA: They state that in their report.

Mr Watters: Yes.

Mr P. PAPALIA: We know that the product did not go in an approved form in the end.

Mr Watters: No, I think we have been through that. In the end what was proposed from pilot plant work did not prove to be effective or necessary. I watched the product from the first of the kibbles actually hit the floor of the shed. I was in the shed when it happened and there was not a problem with it. I do not know if it got tabled, but I have got photos of product going up the first incline conveyor belt late last year in fact, showing that even after it has been on a heap it will still come out in a lump form; it is almost naturally sticky and holds itself together. But we offered that

originally to say this is the way we were going to load it, and by the way as we put it through a screw feeder it is going to come into an approved form, call it what you like, pellets or agglomerates; it would be bound together in some shape or form. However, when it went through the 30 kilometres of transport on the dirt road and all the rest of it, that broke down.

Mr P. PAPALIA: My point was that the consultant thought it was going to be in a different form from that which it ended up going in.

Mr Scott: Just before you leave that, you asked us about duty of care.

Mr P. PAPALIA: Yes.

Mr Scott: We took at the time and we continue to take a very real view about trying to make sure that our product is handled appropriately all the way through, but I am a little cautious about - duty of care means different things to lawyers and so forth.

Mr P. PAPALIA: Yes.

Mr Scott: I think from a company perspective we really care about what happens to our product, but if you start labelling it as a duty-of-care obligation, then obviously that becomes a very much more legal -

Mr P. PAPALIA: It was just in the licence that you signed.

Mr Scott: I appreciate that.

Mr P. PAPALIA: I am sorry, the contract with the port that you signed; it says you have a duty of care.

Mr Scott: Yes, I am aware of that.

Mr P. PAPALIA: With the port.

Mr Scott: I am very aware of it; I am just saying -

The ACTING CHAIRMAN: Currently I think it is fairly likely that in the early stages of transport, when you went down there and inspected it, things were probably done reasonably well, but then I think you fairly certainly took your eye off the ball a bit, because later on I think largely the dust issue was emanating with huge storage in the shed and trying -

Mr P. PAPALIA: I am actually not convinced that enough was done with regard to the assessment process prior to starting everything, because, again, you had an obligation when you told the Department of Environment that it was okay to use that port, there were no significant environment factors to be considered, and, in fact, the port was safe and it was better than Geraldton -

Mr Scott: Which we have dealt with the result.

Mr P. PAPALIA: Your obligation was to provide a dust management plan, and in the end you just abdicated the responsibility to the port. So you were assuming the port was okay. I am trying to find out whether you actually followed through and assessed their processes and determined whether they were in fact safe, as they said.

Mr Scott: What we definitely did not do, and we did not get the information, was we were not aware, just like everybody else was not aware, that the results were being delayed coming through from their system as it was running over the last 18 months.

Mr P. PAPALIA: The testing?

Mr Scott: Yes. So, I mean, I personally doubt I would be sitting here now if we had known in a prompt fashion that things were occurring. There were no red flags raised - there is a real problem here, go down there and have a look and find out what the hell is going on.

Mr P. PAPALIA: Setting aside the test results on the dust monitors, the Riseborough report said that installation of the vacuum system piping the ship loader is a priority and that spillage on the ship loader can be cleaned easily using a vacuum system. Did you ever track whether they did that?

Mr Watters: We went back to them and said, "When are you going to do it?" We knew it had not been done but there was still intention to do it.

Mr Scott: We also understood -

The ACTING CHAIRMAN: What date was that?

Mr P. PAPALIA: I am sorry, this is on 23 March 2005, the Riseborough report.

Mr Scott: Yes. We understood, from discussion anyway, that some of these things had been put forward by the port and then delayed for one reason or another.

Mr P. PAPALIA: The report said that longer-term plans to install a catchment pan under the ship loader conveyors need to be fast-tracked.

Mr Scott: Yes.

Mr P. PAPALIA: You did not check whether it happened?

Mr Watters: We did check and we would get back to the port to say, "When is it going to happen," and as Pat just said, we got that response: "It will all happen as soon as we can get it to happen."

Mr Scott: We need to just keep the context; at the time that this going on we had no idea that there was any major issue. We were not being alerted -

Mr P. PAPALIA: You knew the nickel had escaped from that same system.

Mr Scott: We did, but we did not know that there was lead escaping and if we had known, then we would have paid a lot more attention to these things, obviously.

The ACTING CHAIRMAN: We will get back to that in a second.

Mr T.K. WALDRON: Prior to the recent halt on the transport of Magellan's lead carbonate through Esperance, did Magellan ever consider transporting its product in a sealed container, and was a feasibility study done?

Mr Scott: I think in terms of doing it on a large scale, no. It would not be normal. What we are proposing to do now is something ahead of what would normally be considered best practice for this product. We are very comfortable to do it and we are working up a proposal that we are very sure is going to result in us actually controlling the process, which is what we believe we need; but we believed at the time that what we put together was appropriate.

Mr T.K. WALDRON: In Magellan's response to the questions arising from a previous public hearing, reference is made to Jacmor Engineering undertaking testing of agglomeration of the Magellan product with its screw feeder. Magellan advised there was no report as such relating to this testing. Can you say what were the parameters of the testing undertaken, and was the agglomeration tested with reference to the extensive transport and harsh conditions to which the product would be subjected?

Mr Watters: No, that is exactly right. They are my words, I think. I supervised the testing at Jacmor and it was supervised with a view to putting this stuff, maybe as a feeding arrangement, that would additionally or concurrently produce it into an agglomeration in a generic sense. There was no testing done at the time on the basis of would this break down, would it dust, would it do other things if it was shaken for long enough? Since then, as part of our filter test work, from a pilot plant filter test, we took filter cake and had it dust generation tested at the University of Newcastle. At appropriate moistures, it just does not dust. At the time, I did not see that this was a great deal different from transporting lead sulfide concentrate. I think pictures have been provided of the

product that was tested. It looked for all the world like it was a competent product and was suitable for bulk handling.

[10.20 am]

Mr T.K. WALDRON: Did you take into account the harsh conditions and the distance? Did you feel it would make enough difference, or if it did could you send other loads down and mix it in the shed? Was that how you did it?

Mr Watters: At the time we did not think that far ahead. It was more to look at the competency of the product coming out as distinct from basically filter cake.

Mr T.K. WALDRON: In a letter dated 22 July 2005 from Magellan to the Department of Environment and Conservation in Kalgoorlie, reference is made to the further measure to prevent rogue dust emission, being the agglomeration of lead carbonate. However, as I understand it, in April 2005, Magellan was already aware that the agglomeration had failed. Is that correct? Would you like to comment on that?

Mr Watters: What are the dates of those two?

Mr T.K. WALDRON: You sent a letter on 22 July 2005.

Mr Watters: I think the date on that letter should be 2004.

Mr Scott: It has a "received" stamp of 2004.

Mr T.K. WALDRON: You can see why I was asking the question.

Mr Watters: I have found that in my own files. It is 2004.

Mr T.K. WALDRON: Are you aware of which vessels are collecting your product from the port? When the product is going down, are you aware what vessels will be taking it out?

Mr Scott: Our ship-broker nominates a vessel. Management of Magellan works out a plan of when we would like to see material moved from the port. We go to a ship-broker, Ocean Partners, which looks at the shipping market to see which vessels might be available in the particular time slot we want that are suitable for taking these products. I will continue, because I think I know where the question is going. The ship-broker then takes that vessel, and asks management, specifically me or Alan De'ath, the company CEO in Canada, whether this fits with what we want. When we say yes, they take that vessel and they present it as a nominated vessel to the port of Esperance. The port of Esperance looks at what we are proposing. They can get all the details on the vessel, and they either accept nomination or they do not. If they accept nomination, then we enter into a charter arrangement with the company that provides the ship, and it turns up in due course and we load it.

Mr T.K. WALDRON: So the port makes the decision on whether the vessel is suitable?

Mr Scott: Absolutely.

Mr M.P. WHITELY: Do you do any homework to see whether the vessel is too small? Were you not aware of that?

Mr Scott: We knew this question was going to come up, so I put some data together. I would like to give you that. Firstly, this thing about the vessels being too small, and box-hulled vessels. There were four occasions when vessels of this box-hull description came into the port. The first time it was a vessel called the *Hanna C*, which arrived on 10 January 2006.

Mr P. PAPALIA: Can you tell us where these vessels are from?

Mr Scott: I cannot now, but we can certainly find you that information. The *Hanna C* arrived in port and was loaded with 7 000-odd tonnes of our concentrate, with absolutely no reports of anything.

Mr P. PAPALIA: What was the wind like?

Mr Scott: I just do not know. One, it was before I joined the company and two, there were no reports of any issues.

Mr Watters: No reports on the official log.

Mr Scott: Subsequently, on these box vessels, we ordered a vessel called the *Lemmergracht*. That was loaded on 11 October 2006. It is about a 10 000-tonne vessel, again a box-hull configuration vessel. There were some issues with dusting on that vessel. I am speaking from memory, but it is detailed in this document. I think the actual loading was delayed for a period while they loaded it, but it was not stressed as being a massive problem - "Don't bring these vessels back again" - just that it was more difficult. In response to that, the next vessel of a box-hull configuration was called the *Edamgracht*, which arrived on 31 October 2006. I was very surprised that that was not brought up in any of the discussion you had yesterday. That vessel was basically similar. We sent people down from the mine to have a look at the vessel as it was being loaded, just to see if there was an issue, and what those issues were. That vessel was loaded pretty satisfactorily, and you will see emails from the port and our own people reporting on it. There really was not a great deal of problems. We subsequently had the *Lemmergracht*, which by that time had been to China and come back, loaded up again on 12 December. Because we had had further comment from the port at port users meeting or a handling meeting, I asked Trevor to go down and have a look at the ship and just see, because there had been some further comment about these ships not being easy and suitable to load. I asked Trevor to go down and look at that. There was a significant issue with that, as we have reported. We did not go out and order ships that we felt were unsuitable. We did know that these ships were a little bit more complex to load. We also know that that type of ship is relatively -

Mr M.P. WHITELY: Sorry, you said they were more complex to load. Can you elaborate on that?

Mr Scott: They have to move the loading chute around, because of the configuration of the hull. That makes it a bit more difficult. The port guys were saying there was a greater possibility of generating dust because there were no lips on the hold on it. To some extent, we were not sure whether it was really a complaint about the extra work that was involved, or about the ship being really unsuitable. Anyway, I asked Trevor, as the senior guy in the company, to go down and have a look at this and tell me so that I can tell my boss and the ship-brokers and everybody else either that it does work or that it does not work and that if it does not work, we stop using it. There was never a thought that this was something that was critical or anything else. So that is where we got to.

The ACTING CHAIRMAN: Can you say what you thought once you were there, what your views were when you observed that loading?

Mr Scott: You have probably seen the report.

The ACTING CHAIRMAN: I have seen the dust report.

Mr Watters: I have actually written a report that includes port photos showing where the dust ended up and so forth, and that has been provided, I am sure. I flew down there on the Monday morning, and met Ron Padgurskis. As per their normal inductions, if you are looked after by one of the officials, it is the same as the mine, you do not have to go through the normal induction process, provided you are accompanied. We went into the shed and had a look at it. Loading commenced. We knew that, as had been delivered, it would be around the seven per cent mark, from the site. Loading commenced in the late morning, and without incident. We got the first few moistures back, and they were in the low sevens. That is when I took a photograph of the stuff coming up the belt. There was no visible dust. At that time, the port had a type of security barrier in place so you could not go over to the boat. Once before I had been on one of the normal vessels and I looked in

the hold to see what was happening. This time we were at the front of the control room, we walked as far as the fence, looked at it and it all looked fine. There was no visible dust.

[10.30 am]

The ACTING CHAIRMAN: The hold of the loading?

Mr Watters: This was during the day. From memory, there was very little wind. Even looking at the conveyor, it did not have the Polo Citrus dust suppressant on. I believe that can create some problems if it is not used properly.

The ACTING CHAIRMAN: You are talking about 11 December?

Mr Watters: Yes. We monitored moisture levels through the day. They all looked okay - around the seven per cent mark - and we did not see any visual dust from the vessel. The loading was obviously going to go through until mid-morning. I had been up since midnight basically. I went off and had a meal. I left instructions with Ron Padgurskis. He was going to go home. The standard instructions are that if there are any issues at all - that is, broken conveyor, dust, whatever - he is to be contacted immediately and he would come back to the port. I left instructions to call me at any time if there were any issues during the night. I went and had a meal. Because I was not able to go through all the security and the induction on the day, I drove back to that viewing area and eyeballed it. It was not for a very long time but I went back there.

The ACTING CHAIRMAN: What time was that?

Mr Watters: Eight o'clock or 8.30 pm. I am not sure whether I rang Ron again; I do not think so. Then I went back to my motel. Later on I got a call from Ron. He said, "There's a strong wind, there's a lot of dust blowing around, we're stopping loading." I said, "Good. I'll see you in the morning at the port." I got back to the port the next morning at about 6.30, met Ron, went in and that is when we found out what had happened during the night. I saw Dave Jameson's photos. They are the ones that are attached to this report.

The ACTING CHAIRMAN: For everyone's information, I will quickly read the dust report for 11.20 pm on 11 December. It states -

The operation of loading the lead concentrates had been in progress for 13 hours when the product became very dusty with increasing egress of fugitive dust emissions escaping from the shiploader load chute & the ships hold. Wind direction ENE, speed approx 20-25knts. All fugitive dust emissions were blowing onshore to berth 2 and progressed across to the B2 amenities building, and stretched from the east end of Cosmos shed to the west end of the Black Swan shed.

That was obviously a significant event. Sure, there were strong winds blowing, but surely that tells you something about the moisture content of the lead. We went back through the moisture content of 10 October for the loading of the ship that you spoke about earlier. As you know, the moisture content levels for loading had to be - I get this wrong every time - seven to nine per cent. For the first three or four hours they were about 6.5 per cent and then they were just over seven per cent for a while. Slowly, towards the end of the day, they got up to about eight per cent. That was during the first episode of loading that ship. Obviously, the ore sample was nowhere near sufficiently moist. Following that event and with that ship coming again, did you make any special effort to ensure that the moisture content within that shed was adequate for the stuff that you transported down from the mine?

Mr Scott: We believe that it was adequate to be loaded. For the final loading on that 12 December ship, the average was 7.1 per cent. You have to remember that there is an ability to add additional moisture in the conveying system. Frankly, if there is a problem and the stuff is too dry and it is not suitable to be loaded, we have been told by the port many times - we wholly agree with it - to not move the material. We will send some wet stuff down from the mine; we will do something.

The ACTING CHAIRMAN: Do you know if it was mixed in the shed? Sometimes it will be there too long - two or three weeks - and dry a bit on the outside. I have a theory about that. Are you aware whether it was mixed in the shed prior to that 10 October meeting? Was it mixed in the shed prior to the December loading?

Mr Scott: Trevor did not go down for that.

Mr Watters: I went down for the December one. During this time my responsibilities were not associated with the loading. I was doing some other things. Getting back to that loading in December, I recall that the dialogue between the Brambles guy and Ron was that they were going to use two loaders. There were two sides to that shed. One side looked to be a bit wetter than the other. If they loaded them together, they should be fine. That is what they did. When they started, the moisture level was in the low sevens and there was no visible dust.

The ACTING CHAIRMAN: That is assuming, of course, that the moisture from the sufficiently moist concentrate will pass across to the ore that is not sufficiently moist by mixing them in the front-end loader.

Mr Watters: When I say their opinion was that it was different, it did not look a lot different. It was not as if there was a dry heap and a wet sloppy heap. There were shades of grey.

The ACTING CHAIRMAN: Do you have any idea how long that material had been waiting in the shed for that particular load?

Mr Scott: Some of that material would have been taken down the day before and some of it would have been there longer. We know that the previous ship was in on the eleventh. We are probably talking about a month or so in rough terms. Having said all that, sometimes right at the back of the shed you will get material that has been there for a long time and dried out and that needs to be treated very carefully.

The ACTING CHAIRMAN: I will tell you what I think may have happened. We will need to find out more about those mixing events in the shed. For example, if I were to take a collection of very fine grain sand with a moisture content of seven per cent and a lesser amount of very dusty material, mix them together, wait 15 minutes or half an hour to load them, pour them out and have a fan on one side and something to collect dust on the other, I bet the material that I have put on the other side would be collecting dust. When the wind is blowing across and you are dropping that very dry dusty stuff into a hold from a distance, it would not necessarily take the moisture out of the moist part to stop it from being blown out. That may well be where this fugitive dust came from.

Mr Scott: We take these moisture levels every 20 minutes initially and later on an hourly basis. You will see from the distribution of those whether there are slugs of very dry material.

The ACTING CHAIRMAN: I have been saying that dry material would be mixed amongst the moist material but not have time to absorb the moisture and become equally moist.

[10.40 am]

Mr Scott: Our view, for what it is worth, is twofold. The first time the MV *Lemmergracht* came in, the actual extension piece that sits on the ship loader was not fitted, so that they were actually dropping it from a height. Subsequently, when we brought the *Lemmergracht* in, it was fitted and there were a whole lot less problems with that. However, the clearest view that we have is that that dust that was generated should have been picked up at an early stage. If the moisture sprays and things like that were not dealing with the thing properly, loading should have stopped then. It is absolutely unacceptable what came through. I would not like to tell you what I had to say the next day when Trevor rang me and told me, but it was just not something that should have occurred.

The ACTING CHAIRMAN: Mr Watters, you wanted to say something?

Mr Watters: Just another quick one. Your point is quite valid about the really bone dry material being moistened with some other wetter material. The port has actually changed its procedures in terms of the residual that is left after the shed is emptied of the load. They go around and pick up residual material that, as Pat said, in the past might have been left at one end of the shed. They put that in the middle of the floor now, so that when the wetter material comes down, it might sit on that dry material for three weeks. Then that has a chance to pick up moisture out of the wetter material.

Mr M.P. WHITELY: I just want to go back to the issue that you talked about earlier - the choice of vessels. If I understand what you said correctly, you would select on economic grounds; in other words, probably secure what was the most cost-effective and cheapest vessel.

Mr Scott: Normally, it was on availability - the number of ships of the right size that were capable of taking this material that were going past Esperance. It is a multihold vessel, so the ship can come and pick up three or four different cargoes - maybe nickel from somewhere and something else from somewhere else. You are trying to slot in somebody's schedule.

Mr M.P. WHITELY: You would have been faced with choices?

Mr Scott: Often.

Mr M.P. WHITELY: And the choices typically, as business does, would go for the most economic, cheapest choice.

Mr Scott: Usually, it was a choice to try to fit in best with our schedule. That shed is of a limited size and you cannot overfill it because it stops the mine from cramming stuff. Equally, if you send a ship and you have paid a contract for moving a certain amount of material and there is not that amount of material there, you will pay dead freight. It is very much what is available and when.

Mr M.P. WHITELY: Availability and cost.

Mr Scott: Yes.

Mr M.P. WHITELY: What expectation did you have of the port? What did you think its criteria would be? Obviously, you had to put it up for its approval? What did you think it should be considering?

Mr Scott: They need to consider whether it is a vessel that is suitable to go into the port. They have their loading gear. If it does not fit underneath, if it is too low, if the ship has too much draught - I do not know, but if -

Mr M.P. WHITELY: Clearly, you would have expected -

Mr Scott: If it was an old vessel and improperly flagged, or whatever, I really do not know.

Mr M.P. WHITELY: You would have expected them, from what you are saying, to consider whether the delivery system into the ship was adequate for the type of ship.

Mr Scott: Certainly.

Mr M.P. WHITELY: It is not something that you considered.

Mr Scott: They and their people are shipping experts. We are miners. Sure, we employ ship brokers and things like that.

Mr M.P. WHITELY: I just wanted to get a handle on the process.

Mr P. PAPALIA: I have a quick question for Trevor. When you were observing that ship loading, was the ring spray system on the end of the chute operating?

Mr Watters: I cannot say for sure whether or not it was. I did not notice it working. Let me qualify that by saying that the next day we started reloading the vessel. The wind was almost non-existent and we deliberately went into the shed and looked at whatever was there - I forget how much we had left to load; it was not a lot - and said, "Okay, we'll start loading with Brambles," and

Ron decided that we could start loading that. We took the moistures when we started loading. The port consciously turned on the ring spray on the first loading point up near the ship's cabin where the captain stands, or the stern. The moisture was clearly quite visible coming out of there. Looking back at that, I would have to say that I think I would have noticed it if it had been on the day before.

Mr P. PAPALIA: You would have thought so based on the photos.

The ACTING CHAIRMAN: Just for your information, you made comment that the ship in late October had not had dust problems. You said that it was the thirty-first. We have 29 October.

Mr Scott: These vessels sit -

The ACTING CHAIRMAN: In the board minutes, there is a note that says, "Dust during shipments on 10 October end 29 October". Their report to the board states that there were dust issues.

Mr Scott: To yourselves or to their board?

The ACTING CHAIRMAN: To their board.

Mr Scott: Okay, because we have emails from them that, yes, there was some dust, but the issues were minor and this was much better than the previous one.

The ACTING CHAIRMAN: It says dust problems. I just wanted to get that on the record.

Dr G.G. JACOBS: Following on from those shipping notes, the loading on 11 December, Trevor, referred to the event being totally unacceptable. You were at that meeting with Colin Stewart, Ian Harrod, Ron Padgurskis and Dave Jamieson.

Mr Watters: Yes, late in the morning.

Dr G.G. JACOBS: It was noted that the vessel is the same one that caused the dust problems the last time it was used. I am almost certain that it is referring to the loading of this vessel when it came in on 10 October.

Mr Watters: Yes.

Dr G.G. JACOBS: The actions to be taken in this December note was to not use this type of vessel again. Why did you not prevent the ship that was there in October coming again in December and going through the same unacceptable issues of dust?

Mr Scott: You will see again from these documents that we will give you, but the key is that four times vessels that were essentially the same came. The vessel came twice and twice it had problems, and two other vessels were of the same configuration but were loaded with a lot less problems. The first time that vessel had a problem, as I was saying, they had not extended that chute. We did not think that the problem was going to reoccur. The information that we had from the port - they did not say not to send them that again. When they eventually told us in December, "Look, we don't want any more of these vessels", we could easily have argued that this occurred because they kept loading and they should not have or that they did not do it properly. We did not; we said, "All right; we won't use those vessels", and we did not. Quite frankly, it is for them to nominate. If they did not want that ship, it was absolutely up to them to say that they do not accept it. We would have been left with no choice but to find something else that they would have accepted. It is very much their area of responsibility, not ours.

Dr G.G. JACOBS: In the port records of the problem of loading the Magellan product on 10 October 2006, the product rep, identified as Ron P., which we presume is Ron Perserskus, did not want water added without his prior approval. Could you explain why and how that worked?

Mr Scott: He does not have the authority to stop or start the moisture. As you have heard, I know, the actual handling of the product out of the shed and into the boat rests with the port.

Dr G.G. JACOBS: It is not Ron's call?

Mr Scott: No. It is certainly right and correct for him to be advised, but they should have been adding moisture to the extent that it was required - always.

Dr G.G. JACOBS: Would there be any reason that Ron P. would not want water added?

[10.50 am]

Mr Scott: Yes, because, if too much water is added and the thing goes over the transportable moisture limit, it is an issue. For that reason - it is appropriate for him to be aware - he would have absolutely no instructions or anything else from us to try to stop moisture. We wanted the stuff loaded in a safe, proper fashion that did not cause dust. That is exactly what we wanted. Frankly, I think there is a bit of casting around if you like.

Dr G.G. JACOBS: Absolutely; we have documentation of the record.

Mr Scott: Yes, I am sure. As I am saying there is not -

The ACTING CHAIRMAN: I guess, the thing that concerns me the most is that you have a requirement through your shipping contract to have a certain percentage of moisture; you have equipment that measures moisture content prior to its going and then travelling such a long distance. The port has moisture measuring equipment for once it gets onto the conveyor belt, but by then it is too late. It can sit there for three weeks and Magellan does not have any proper moisture testing procedures in the shed. We have been told that the person responsible in that shed was not Brambles; it was the combination of your employed person and the port authority to determine that that moisture content was adequate; yet, clearly, on a number of occasions that system failed and you had no proper testing facility in that shed, did you?

Mr Scott: You can always test. You can always put a spear into something and get a moisture content.

The ACTING CHAIRMAN: They did not.

Mr Scott: They did not because -

The ACTING CHAIRMAN: The moisture testing procedure from what we saw was digging a hole with a hand and having a look at what it was like inside.

Mr Scott: Probably an experienced person would get just as a good a result from that.

Dr G.G. JACOBS: I do not think so. That is a very subjective thing.

Mr Scott: It is, but it is actually probably right.

The ACTING CHAIRMAN: The end results prove you to be wrong, do they not?

Mr Scott: Well, maybe.

The ACTING CHAIRMAN: For the record, what was the value of goods exported by Magellan in 2005-06 and the royalties and taxes paid to the state and federal governments? Do you have that information handy?

Mr Scott: I do. The annualised income tax that we would have expected to pay for this year is \$A24 million, at a 30 per cent tax rate; the annualised royalties was \$A10 million; the annualised payroll tax is \$400 000; and the payroll withholding tax \$A2.1 million. We put a column in here showing the benefit, looking at a flow-on benefit to the people of Western Australia for what we have spent, which is about \$270 million.

The ACTING CHAIRMAN: You will be aware that we have those figures, obviously. I wanted them on the public record. Thank you very much. We need to move on. A transcript of this hearing will be forwarded to you for correction of minor errors. Please make these corrections and return the transcript within 10 working days of mailing. If the transcript is not returned within this

period, it will be deemed to be correct. As previously, some questions have not been asked. We have covered most but there are a few we did not cover, so we will send them to you and ask you to return them within 14 days. Thank you very much.

Hearing concluded at 10.52 am
