Cobble Hill Holdings ltd.
#1-505 Fisgard Street
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October 9, 2018

Office of the Assistant Deputy Minister
Environmental Protection Division
PO Box 9339
Stn. Prov. Govt,
Victoria BC V8W 9M1

By email

Attention: David Morel, Assistant Deputy Minister,
Environmental Protection Division
David.Morel@gov.bc.ca

Dear Sir:

Re: Comments on Possible Approval Conditions for Cobble Hill Landfill Updated Final Closure Plan Report/ and Draft Letter for Consideration.

In response to your letter dated September 20, 2018, Cobble Hill Holdings Ltd. ("**CHH**") makes the initial observation that institutional memory on this matter is required. Specifically, many detailed professional analyses exist of this facility and the potential impacts (or lack there of) on the environment and human health, the most comprehensive of which was the review of the Environmental Appeal Board set out in Decision Nos. 2013-EMA-015(c), 019(d), 020(b) and 021(b). After four months of hearing days beginning in March and running into July of 2014, that panel reviewed the evidence called by the Ministry experts who assessed the proposal and the opponents who challenged the sufficiency of that review. CHH did not lead engineering evidence. In assessing the risk that the delegate had already determined was not material, the Board considered the "worst case scenario" from this specific activity, including the opinion of the following persons:

- Kirk Hancock's, (MEM) site inspections and calculations (para 461 and 462);
- Deborah Epps', (MOE) evidence regarding downstream water quality improving from treatment (para 551);
- Opponent Dennis Lowen's worst case calculation would result in 1.5 teaspoons of water in 64 million litres of fresh water (dilution factor of 4.2 billion) (para 581-582);
- Silvia Borroso and Patricia Lapcevic's (MOE) calculations (para 583);
- Dr. Annette Mortensen's opinion that in light of the actual contaminants in question even if Mr. Lowen's hypothesis were correct (which she did not accept based on her PhD in fractured bedrock environments and contamination transport) the 1.5 teaspoons he hypothesized would not be contaminated should it reach the lake (para 586-589, 591).

The finding of the "trial de novo", consistent with that of the MOE based upon its own independent reviews and inquiries was, **"The Panel also finds that, in the event that a pathway exists to the lake, by the time that the contaminated flow reached the lake, it would not be contaminated at all" (para 593).**

With respect, within this background your letter does not fit. The Spill Prevention Order (SPO) referenced was issued to address an isolated event in late 2016, when the installation of the clean sand layer in the encapsulation area was set back by rain, and a late delivery of materials. While CHH and the operator have always taken the event seriously, it must be understood in the proper context: the event was reported promptly, all Ministry directions were followed, no harm resulted from that event, there was no water discharge outside the boundaries of the facility, it was fully remedied in a period of four hours, no risk existed or exists that wasn't entirely ameliorated when the late delivery of materials arrived within days of the event itself.

However, since that time the SPO has remained an active part of the Ministry's approach to the continued relationship with CHH, and the operator, and we believe it is and has been going in the wrong direction for some time. As you know, the Minister cancelled the permit in early 2017. CHH had requested 15 days to comply with her bonding, once the requirement had been determined and approved, and requested clarity with respect to her having provided a direction that is inconsistent with section **4.2 "Posting of Security and Costs"** of the Permit itself. The Minister refused to reply to this request, she refused to specify an approved amount of a bond, and she failed to clarify the inconsistency. By the Minister's own words, there was no harm or risk-based rationale for the permit's cancellation.

Any continued perception of risk is misinformed.

In the months that followed after the Minister's decision to cancel the permit, we were required to provide as-built drawings and to demonstrate, at a great expense, that the facility was installed in accordance with them. This audit level inquiry was so probing that we were actually required to dig up the seepage blanket to prove that it was, in fact installed to specification. To date all of the facility's construction and design has been accepted by the Ministry as complying with the permit.

As a consequence of the SPO, we were unable to proceed to the final phase of encapsulation and furthermore have approximately 2600 tonne in the soil management area that was lawfully brought in before the operation under the permit was stayed, and then cancelled.

A further consequence of the SPO, is the Ministry's monthly monitoring requirements are costing our companies approximately $200,000.00 per year in engineering and testing alone. The most recent report of Martin Jarman, P Geo, CSAP July 3, 2018 main finding states that: **"the characteristics of leachate chemistry, which is rich in chloride and sodium, differs in overall chemistry than that found in groundwater, seepage blanket water and in surface water at stations SHA-SW1 and SHA-SW2**

on the Site. This finding is a good indication that the leachate generated from the soils located within the enclosed PEA (which is collected, stored and eventually removed from Site), is not interacting with the natural groundwater or surface water regimes on the Site and thus not causing any identifiable impacts to local environmental receptors." But yet the Ministry is insisting on four times the amount of monitoring than the industry average, and four times the monitoring required in the Permit.

A Spill Prevention Order and reporting made under s. 79 of the *Environmental Management Act* requires that it be **"reasonable and necessary"** to lessen the risk of an escape or spill of a substance. Respectfully, as outlined above, there has been no risk of any spill since the liner shipment arrived in the fall of 2016. Subsequent reports, site visits inspections, and monitoring, all under the watchful eye of the Ministry staff including its own independent engineers have all verified this. It is therefore CHH's position that it is not appropriate, **"reasonable, or necessary"**, in these circumstances for the SPO to be continually used as a pretext to effectively amend the permit conditions.

I note, it was the Ministry's own letter of March 15, 2017, amending the SPO and requiring "detailed engineering records produced and signed off by suitably qualified professionals" that suggested the February 2017 Closure Plan should be amended to remove the importation of additional soils. The culmination of this direction was the July 21, 2017 Final Closure Plan. There is no evidentiary basis to justify modifications or supplementation to the Closure Plan as suggested in your draft letter. While we are of the view that the soil in the soil management area ought to be added to the reclamation area (e.g. the cell), CHH is not prepared to do so if it would result in the imposition of the new criteria effectively added by the Ministry since the issuance and cancellation of the permit.

It is a fact that 100% of the soils were legally brought onto the property and handled in full compliance with the intake procedures of Permit #PR-105809, and the approved Operating Procedures Manual, all while under constant vigorous scrutiny of the Ministry, it is CHH's perspective the soil should simply be left alone, and the SPO should be lifted to allow us to complete the encapsulation as the Permit conditions and design dictates.

Based on the above, CHH would support the following, and ask you to amend your draft letter to contain the conditions listed below:

1. The current cell will be certified, and closure of the facility will be in accordance with the conditions it was built to. (PR-105809);
2. Any cost associated with the degradation in the cell membrane, as a result of the Ministry imposing a stop work order on CHH for the last three years, will be the Ministry's responsibility;
3. The time period for completing the work contemplated by the Closure Plan will be 24 months for full compliance (e.g. to the installation of growth media);
4. The monitoring obligation provided for in the Permit will remain unaltered, as no evidence justifies or requires modification;

5. CHH will have 2 years to make alternative arrangements for the disposal of the 2600 tonne in the soil management area;
6. Upon completion of the foregoing, CHH's bond will be returned; minus a reasonable amount for monitoring in the future;
7. The SPO will be lifted; and
8. CHH will not participate or hold open houses in Shawnigan Lake.

Your letter of September 20, 2018 provided 11 days for a response. We requested an extension, and were given an additional 8 days, which we appreciate. However, it is not an adequate amount of time to understand what you say is the basis for the recommendations from staff and the basis for them. At this time, it remains our understanding that this facility poses no risk to the environment. To date, we know of no evidence that alters this proposition.

In closing, CHH, its directors, engineers, and contractors, have repeatedly shown that the materials that were lawfully accepted at the facility, were managed in full compliance with the Permit # PR-105809, and continue to be managed in full compliance of those conditions. We are not Polluters, and we ask the ministry to stop treating us as such.

Respectfully submitted,

Cobble Hill Holdings
Michael Kelly
President

Enclosures:

- 2015 EAB DECISION NOS. 2013-EMA-015(c), 019(d), 020(b) and 021(b)
- Assessment of Water Quality at 460 Stebbings Road