

**Cobble Hill Holdings LTD
10-536 Herald street
Victoria BC V8W 1S6**

October 13, 2016

File number 105809

BC Ministry of Environment
Office of the Minister
Parliament Buildings
Victoria BC V8V 1X4

Telephone 250-387-1187

Attention: Minister Mary Polak

Regarding: Suspension or Cancellation of Permit PR 105809

Thank you for your letter dated October 11, 2016. It is our position that the cancellation or suspension of the permit is not warranted in the circumstances.

In response to your letter, we would like to give you a brief summary of where we believe these issues stemmed from, as well as provide you with the assurance that this permit appropriately and sufficiently protects the environment. In the words of your own staff, this is the best run facility on the island (if not the whole province). This is very important to us.

When we first set out to apply for this permit in 2010, our first instruction to our engineers was if this can't be done 100% correctly and safely, then it will not be done. After an exhaustive 31-day Environmental Appeal Board ("EAB") hearing, the expert panel confirmed we can.

On or about November 2015, the Ministry notified us that we were having non-compliance issues with the amount of water discharge from the site. This was not an issue of quality, only of the volume of water, which is directly proportional to the amounts of rain that fell in the time period. When our holding pond reached 50% capacity, SIRM's initial solution was to truck water off of the site during the heavy rain event, as an added safety precaution. There was no issue with the function or capacity of the plant. This was done solely to lesson the volume of clean water being discharged to the stream. It was reported to the Ministry in the quarterly report, which instantly created a non-compliance warning in water volume. The non-compliance warning resulted from these self-imposed safety measures that proactively upheld the strict permitted protocols. This was a very steep learning curve in respect to Ministry protocol, which is very clear to us now.

Last week, as part of permissible closure operations, SIRM applied 12 inches of clean, "schedule 7" sand to the slopes and top of the permanent encapsulation area ("PEA") expecting the arrival of the permanent liner material. Unfortunately, there was an unanticipated supply issue at the factory. The liner did not arrive as scheduled and will be arriving this coming week. With the sand uncovered on the slopes for longer than planned, and the heavy rains of October 8th, the sand became heavily saturated and some of the material collected at the edge of our cell, blocking a pipe. As you will see in the attached report, in accordance with the permit, all of the contact water was tested and documented by our staff at the

discharge point, and again these results were self-reported to the Ministry. Expedited samples were sent to labs in Vancouver with results being analysed by our QEP **“from October 8 and 9, 2016 sent to your office by SIRM via email, the impacts from over land flow on the surrounding environment was minimal.”** The compounds found were consistent with the sand product, and not our PEA soils.

As you will be able to see in the attached report, the entire PEA is now covered in 6 mil poly and capped with a 30 mil liner. We will be waiting out this next storm. Our QEP has confirmed that with the systems in place, there will be no contact water generated from the site. When the sky is clear, we will be installing the permanent liner on the cell and producing a closure plan for your staff, subject to further direction from the Ministry discussed in greater detail below.

Last winter, a boil-water advisory was put out to the people of Shawnigan Lake by VIHA, in response to a false alarm reported by an overzealous local area Director. This was found to be a fabrication and the water advisory was lifted shortly afterwards. Unfortunately, it had already created fear in the community, and increased the public’s distrust in our operations. As you will recall, the opposition brought up this point during the question period and you defended that the permit had not been violated.

Following this, a permit review was commenced by the MOE. We were asked to retain an independent site engineering consultant, and in response, Stantec Engineering was hired. In January 2016, SIRM proposed a work plan to the MOE which was agreed upon. Stantec reported and recommended certain works that were completed by SIRM. The works included east to west ditch restoration, west ditch reshaping and flow diversion into the southwest corner of the settling pond, and the height of the internal berms in the settling pond were raised. MOE also acknowledged SIRM’s ongoing efforts to manage contact water, including the removal of any contact water from the site into temporary holding tanks, which adds substantial water treatment capabilities. Installation of a permanent roof over the soil management area was also proposed and implemented.

However, as of late July, the required assessment of the non-contact and contact water had not been completed. This water management review created, and still does create, a non-compliance with the Ministry. The reason for this ongoing non-compliance is a current court case before the Court of Appeal arising from land use controls within the Cowichan Valley Regional District which has effectively shut operations down. No new contaminated soil is permitted without court order. Our letter to Mr. Downey confirms this. While our permit is in the hands of the courts, there is no principled reason to be conducting these studies, which are intended to enhance the future operation over the operating life of the permit. We ask for recognition of the fact that investment in future operations at this point is potentially a substantial waste of resources without benefit.

Once our ability to operate is confirmed, we will execute both studies proposed by Stantec, as requested by your staff. These studies are extremely expensive (\$200,000.00), and we are not in a position to implement them while we are not able to operate. Should the ability to operate not be confirmed, we will, of course comply with any necessary requirements imposed with respect to closure.

To reiterate our position, we fully expect to be successful in the courts and we will commit to having both reports in the hands of the Ministry of Environment within four months of a favourable result. Should these studies result in additional works to be carried out on the ground, we would also start these works forthwith.

Should the decision of the court be against us, then the efforts of these studies would be thrown away, as they are operating initiatives, and we would instead have to implement a permanent closure plan to the satisfaction of the Ministry.

I have had a lengthy discussion with Mr. Downey and it has been brought to my attention that there has been a misunderstanding in terms of the Ministry's perspective on our updated closure plan and the revised cost estimate for this plan. Since the courts shut down our operations, we were moving forward to permanently close off the first cell with a permanent liner. This would leave us with a site that produces zero contact water and would stay that way until the court decision. We committed to Mr. Downey to hire Mr. Tony Sperling (QEP) to oversee the shaping and installation of the permanent liner, which we have done. Mr. Sperling was vetted by the Ministry and approved. In Mr. Sperling's scope of work, he will also be stamping the "as built drawings", producing a closure plan, and commenting on the need to revise a cost estimate for the original closure plan. Mr. Downey advised me today that, while we were moving forward with the assumption that the closure plan and design that we have built to our permit conditions were approved, the Ministry has actually asked for a new closure plan and updated cost estimates arising from it. I have taken full responsibility for this misunderstanding with Mr. Downey, and have assured him that this was a misinterpretation of his correspondence on my part that we will take immediate steps to rectify. It was always our intention to comply with Ministry requirements. Mr. Sperling has suitable qualifications to give us guidance on closure and security cost estimates for the required permit. All of the deliverables will be submitted, as the cell liner material arrives next week, and the installation will begin once the rain subsides, subject to Ministry approval.

To date, the cell that has been constructed accords fully with the requirements of the permit. Protection of the environment has always been paramount in its design. We remain committed to meeting the Ministry's requirements. Although the court has required that we cease operations, resulting in us having to lay off forty staff members, we have maintained staff at the quarry to ensure environmental protection and safety to the public. This will continue while we await the court's decision.

There is a real need for this permit locally in the Cowichan Valley, and generally on the Island. This need has been recognized by the Delegate, by the EAB and most recently by the Court of Appeal in an interim ruling, which quoted from the EAB decision finding that "in the absence of such a facility, contaminated soil is either dumped illegally, moved under soil relocation agreements, or trucked to other parts of the Province", that there are "clear social and economic benefits to the larger Island community of cleaning up existing contaminated sites by moving contaminated soil to a well-designed, engineered facility that screens, treats and properly manages contaminated soils, and that is monitored and regulated" and that on the evidence before the EAB panel illegal dumping of contaminated soil "ha[s] been happening in the Cowichan Valley: it is not an "imaginary" risk."

In closing, there has never been, nor will there ever be, any doubt that we can operate this permit under the guidelines prescribed. I, my partners and our contractors take this responsibility seriously, and we are committed to continue being the best run facility in the province to address a real and pressing need in the local community and on the Island.

Yours Truly



Martin U. Block