FRIENDS of GREAT SALT LAKE

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June 6, 2019

Ty Howard, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, UT 84114-4880

Dear Ty:

FRIENDS recently obtained, through several GRAMA requests, copies of the back and forth between the Division of Waste Management and Radiation Control (Division) and Promontory Point Resources, Inc. (PPR) pertaining to additional information that the Division sought from the company on the number and location of groundwater monitoring wells at PPR's Promontory Point facility. After reading this correspondence, and given the strange procedural position we are in since this information has all been submitted to the Division well after the close of the public comment period, I felt compelled to write to you and express my dismay at the company's complete disregard of its responsibilities to ensure that Great Salt Lake is protected from accidental discharges to groundwater from its facility. Specifically, I'm referring to the April 2 and May 14, 2019 comments from the Division and the corresponding April 24 and May 22, 2019 responses from PPR.

Before I outline my specific concerns below, allow me to state that I was completely taken back by what I can only describe as the arrogance that PPR has shown towards your Division as you attempt to fulfill your obligations under the law. Simply because PPR had the poor judgement to build an unneeded, unwanted landfill on the shores of Great Salt Lake is not sufficient reason to show utter contempt for the Division's requests for additional information. Nor is it reason enough to compel your Division to retroactively approve the company's unilateral and uninformed decision to install monitoring wells. Not only did PPR not obtain the Division's approval for the location and number of wells, but it installed those wells before it had even completed its hydrogeologic study. And now, rather than even considering the Division's requests for additional information, PPR continues in its consistent failure to take the Division's and the public's concerns regarding possible impacts to Great Salt Lake seriously. This is unacceptable. Great Salt Lake is an unparralled, world-class treasure that is directly threatened by PPR's facility, and the Division must push back on the company's attempts to justify the completely inadequate number of groundwater monitoring wells that PPR "proactively" installed by denying its request for a permit modification.

The first striking example is a response that PPR made to the Division based on the Division's April 2, 2019 comments to PPR on the company's hydrogeologic report. In its comments, the

Division noted: "*Utah Administrative Code (UAC) R315-308-2 requires that a groundwater monitoring system contain at least two downgradient wells (i.e., a minimum number in the simplest of cases). Promontory has three downgradient wells. The DWMRC believes that with only three downgradient monitoring wells, the downgradient gradient dimension of the cell is too large to ensure adequate detection in the event of a release at 95% of the time. We ask PPR to demonstrate that releases will be adequately detected with only three downgradient wells. For example, this could be accomplished through Monte Carlo modeling of random releases with forward particle tracking within the framework of a simple, analytical groundwater flow model. The relevant parameters of that model could be gleaned from the recently completed slug tests.*"

Rather than acknowledge the Division's concerns, PPR starts out by noting that it considers the spacing between downgradient wells to be "appropriate," April 24, 2019 PPR Response, at 11, and essentially complains that it is being unfairly required to do more than other Class I or Class V landfills. The company goes on to state that: "Neither modeling of well placements nor a 95 percent detection rate at the landfill is required by UAC 315-308 or any other law or regulation." April 24 Response, at 12. In justification of its position, PPR conveniently misinterprets 40 CFR 258.51(d) and complains that it provided all of the information required by that regulation. What the company seems to be arguing is that because it (supposedly) provided the outlined information, the actions it took in placing its wells must be justified. This argument fails to acknowledge that the Division has the discretion to require additional wells in "complicated hydrogeologic settings" or as may be needed "to define the extent of contamination detected." UAC R315-308-2(2)(b). And it is clear that the Division was stating that it needed more information than PPR provided to determine whether additional wells are necessary.

PPR's selective citation to section 258.51 also fails to note that the regulation is clear that the "downgradient monitoring system must be installed at the relevant point of compliance **specified by the Director**," 40 CFR 258.51(a)(2) (emphasis added), not the company, and that it is the *Director* that makes the determination as to "[t]he number, spacing and depth of monitoring systems," 40 CFR 258.51(a), based on "site-specific technical information." 40 CFR 258.51(d)(1). The ironic part to PPR's argument is that the company never bothered to consult with or obtain approval from the Director before it installed the downgradient wells. This is a classic case of asking for forgiveness rather than permission, and flies in the face of regulatory requirements.

The second striking example is PPR's response to the Division's May 14, 2019 comments. In those comments, the Division noted that it would be appropriate for PPR to undertake "a groundwater flow and transport model, built on the basis of the interface of the hydrogeologic components listed in 40 CFR 258.51." Rather than acknowledge its willingness to consider or comply with this request, PPR responded with a cavalier "[w]e disagree with the suggestion by the DWMRC." May 22, 2019 PPR Response, at 3. This offhand dismissal of the Division's request shows that once again PPR fails to acknowledge concerns about its location and that modeling is a very reasonable way to determine whether additional downgradient wells are needed in order to protect Great Salt Lake. Perhaps it's my conservative upbringing, but this is simply not an adequate response to the Division's request. Rather than seriously considering the Division's attempt to ensure adequate protection for Great Salt Lake, PPR complains that "[s]uch modeling is not required and has never been performed in Utah for the permitting of a Class I or

Class V Landfill." May 22 Response, at 3-4. Under the circumstances, I feel that it would be perfectly appropriate for the Division to tell PPR that it is requiring the modeling because no Class I or Class V landfill has ever been built right on the shores of one of the hemisphere's most complex ecologically and economically important hydrogeologic systems. It seems clear that PPR is unwilling to acknowledge that it is not just another landfill built in the middle of the desert.

By regulation, the hydrology and geology of the landfill site are core concepts at the heart of the Division's permitting decisions. UAC R315-311-2(2)(b). PPR seems to feel that its "many years of experience" should outweigh these regulatory requirements and the Division's experience and expertise and adds insult to injury when it states: "In our opinion, it is impractical, arbitrary and unreasonable to conduct groundwater modeling for the stated purpose." May 22 Response, at 4. The Division's request for modeling is entirely reasonable, proper and necessary in order to provide the Division with the data it needs to make an informed decision about the appropriate level of groundwater monitoring that should be required in this situation. It is simply unreasonable for PPR to demand that the Division approve a slip-shod groundwater monitoring "system" built without the Division's input and after dismissing its reasonable requests with no legitimate justification. Since PPR chose to build its landfill on the shores of Great Salt Lake and installed its groundwater monitoring wells without Division approval, the company should not complain about the Division's request for additional information about this incredibly complex hydrogeologic system. The inadequate study that PPR submitted to justify its already existing groundwater wells is simply not good enough to ensure protection of a critical Utah resource. The Division should not buy into PPR's contention that the few holes the company dug provide sufficient data to represent the extensive and complex subsurface under the landfill and between the landfill and the Lake.

Put simply, what the Division is asking PPR to provide is not only justified under the regulations, but is required under the circumstances. Given the numerous exchanges and opportunities the Division has given PPR to provide an adequate system, we ask that the Division deny PPR's permit modification request. This would make clear to PPR that the Division takes its responsibilities to protect Great Salt Lake from landfill impacts very seriously, that the Division is not required to rubber stamp PPR's decision to "proactively" install the monitoring wells, and that the information provided by the company is insufficient for the Division to make a responsible determination regarding the appropriate number and location of groundwater monitoring wells.

I appreciate your attention to the points raised in this letter. Please don't hesitate to contact me with any questions you may have.

In saline,

Lynn E. de Freitas
Executive Director