

**Response to USEPA Questions
Commonwealth of Massachusetts
October 27, 2012
New Bedford Marine Commerce Terminal (NBMCT)**

Introduction

Thank you for this opportunity to provide USEPA additional information related to the development of the NBMCT. Development of this facility represents an important opportunity to deliver lasting environmental benefits to the New Bedford region, as well as accelerate economic development throughout the region.

This document provides responses to some of the USEPA's questions and comments submitted via e-mail dated October 22, 2012 and October 24, 2012.

The format of the document will follow a comment-and-response outline, where each of the USEPA Comments will be listed in the order in which they were presented in the USEPA's Memoranda with the Commonwealth's Response to each Comment presented immediately thereafter.

From EPA's October 22, 2012 E-Mail:

Question 1: Comparing the draft TSCA Determination in Appendix J1 of EPA's Draft Determination to Configuration A2, please confirm that the configurations of the parcels below have not changed from what is represented in Appendix J1:

Map 31, Lot 288 RES S Front St. (vacant Shuster parcel), minus small excluded area as shown on TSCA Determination

Map 25A, Lot 53 NS Blackmer St (North DMF property)

Map 25A, Lot 49 NE Blackmer St (South DMF property)

Map 25A, Lot 48 SE Blackmer St (Coastal Area east of Blackmer St and Gifford St. boat ramp) minus the area shown on the TSCA determination

Response: Yes, the Commonwealth confirms that is correct. The area within which the Commonwealth requested a TSCA determination includes those four parcels, and has not changed in the period since the EPA issued its Draft Determination.

Question 2: As to the parcels listed in No. 1 above, please confirm that the information provided in the 21E, Phase 1 assessments 10/1/2012 submittal does not represent a change in condition or new information about the contamination on those parcels.

Response: Yes, the Commonwealth confirms that is correct. No new environmental investigations or environmental data has been gathered regarding the parcels in question (from Question 1) that had not previously been submitted to EPA. This information was included in the Phase I because, at the time of preparation, it was not prepared solely for submission to EPA (but also for others on the Commonwealth's project team); and as such, there is some duplication in the Phase I submitted to EPA and the environmental investigation data within the Commonwealth's January 18, 2012 submission to EPA.

Question 3: Please clarify whether or not Map 31, Lot 234 (Radio Tower) and Map 31, Lot 263 (Shuster) are now considered part of the main terminal.

Response: The approximately 1 acre area of Map 31, Lot 263 (Shuster) will be considered part of the main terminal (this is because even though it will not have the heavy load characteristics of the rest of the main facility, it includes a portion of the facility bulkhead). The Map 31, Lot 234 (Radio Tower) property is an ancillary property¹ intended for use as lay-down area mainly for component storage..

This can be more clearly seen on the attached updated drawing, titled "New Bedford Marine Commerce Terminal Proposed Configuration A2". This updated drawing shows the proposed uses of the individual parcels via color coding, and includes the Map and Lot number of each parcel (except for the Blackmer Street extension, which has no parcel number assigned to it). The green hatching indicates the transportation corridor. The pink hatching indicates ancillary (lay-down) properties¹. The area in yellow indicates inclusion in the main terminal, which includes two types of properties, the heavy load area of the main terminal (cross-hatched in yellow), and the Map 31, Lot 263 (Shuster) portion of the main terminal (only striped in yellow), which has a reduced loading capacity commensurate with its existing load bearing capacity (as significant excavation and subsurface ground density improvement is currently not planned for this parcel).

[1. The ancillary properties are so designated for the purpose of describing, from a regulatory perspective, the intended use of these properties once the facility is operational, and (consequently) the type of construction activities that will take place to prepare those properties for their intended use. From the perspective of the future marketing of the Terminal, they are still considered part of the overall New Bedford Marine Commerce Terminal (NBMCT), but will have different use characteristics than the "Main Facility" (the Main Facility having broader use characteristics because of its heavy load bearing characteristics.)

Question 4: Please explain what land work activities will be conducted on the two parcels listed in No. 3 above. Note that neither of these properties are currently included in the draft TSCA Determination; and, in the event that PCBs are identified on these properties, another TSCA Determination may be required.

Response: At present, the Commonwealth does not plan significant earthwork or other changes to the Map 31, Lot 263 (Shuster) property. It is currently anticipated that the existing paved surface will be preserved. The area will be utilized for component storage. The Commonwealth will maintain and monitor this paved area.

The Commonwealth currently anticipates utilizing purchased offsite fill to grade the Map 31, Lot 234 (Radio Tower) property. This parcel will be used for component storage, which could include wind blade or other project component storage.

The Commonwealth understands that if PCBs are identified on these properties in the future, that another TSCA determination may be required.

Question 5: EPA understands the Commonwealth will be obtaining easements on parcels to be used as a transportation corridor between the main terminal facility and the former Dartmouth Finishing site. Please clarify the Map and Lot numbers associated with the easements, whether there are any public ways, and identify the easement parcels on the updated Final Configuration Map, as further detailed in No. 6 below. We understand the easement portion of these parcels will be paved, maintained, and monitored in accordance with your response dated October 17 to EPA's questions dated October 5. Please clarify what actions will be taken to address the debris pile referenced in the Phase I assessment on the easement portion of Parcel 30 (Hathaway).

Response: An updated drawing, titled "New Bedford Marine Commerce Terminal Proposed Configuration A2" is attached, and includes Map and Lot numbers of the parcels (other than the Blackmer Street extension, which has no Map and Lot number, but is also not an official public way, but has been used as such historically. The transportation corridor is noted in green hatching on the attached drawing. The corridor includes 5 parcels. Four of the five parcels will be easements only, and the Commonwealth will not own the properties. They are: Map 21 Lot 30, Map 25A Lot 5, Map 25A Lot 45, and Map 25A Lot 47. The Commonwealth will be obtaining ownership of the Blackmer Street extension from the City of New Bedford but will be making no changes to that parcel. The Commonwealth expects it will continue to serve as a public way (this area is currently paved and contains city-operated utilities). As stated in the Commonwealth's response dated October 17 to EPA's questions dated October 5, the Commonwealth will pave these areas (if not already paved) and will maintain and monitor these paved areas.

The existing debris pile on Map 12 Lot 30 is owned and controlled by the current owner of this property, who has previously indicated to the Commonwealth that the owner wishes to keep this material. If so,

the owner of the property will be required to remove this material from the proposed easement area, or the Commonwealth will move this material to locations outside of the proposed easement on behalf of the owner of the property. Should the owner wish the Commonwealth to remove the material itself, the Commonwealth will collect samples of the debris piles to characterize the material for disposal prior to disposal of the material offsite.

Question 6: The proposed Configuration A2 map is dated 3/24/10, last revised 7/7/10. Please update and provide a new map, with the current date. On that map, please identify all properties to be included in the main facility with cross hatch, and identify all easements and all ancillary properties. Please include on the map, all Map and Lot numbers for each property impacted by Project.

Response: An updated drawing, entitled "New Bedford Marine Commerce Terminal Proposed Configuration A2" is attached.

Question 7: Please describe what land work activities, if any, will be conducted on Map (map information not provided), Lot 7 and whether or not the portion of the parcel to be used is paved.

Response: Map 25A, Lot 7 is currently paved and is anticipated to be used as an ancillary property which will be used for blade laydown. The Commonwealth will maintain and monitor this paved area.

Question 8: Please describe what land work activities, including paving, will be conducted on Map 21, Lot 45 (former Dartmouth Finishing) and how the debris pile noted in the Phase 1 assessment on this property will be managed. Note that this property is not currently included in the draft TSCA determination; and, in the event that PCBs are identified on this property, another TSCA determination may be required.

Response: The Commonwealth plans the following actions on Map 21, Lot 45 (at the time of construction, commence the following construction activities): Re-grade the existing material on the parcel, cap the material with clean dredge material from the boat basin or channel (i.e. Bottom of Dredge material) and cover the material with a one foot layer of Dense Graded Aggregate. A total of three feet of clean material will be placed over any existing material that is being re-graded at the site. The existing soil piles onsite are currently anticipated to be incorporated into the re-grading efforts at the facility. The dense graded aggregate material, once placed, will constitute the "pavement section" (engineering term) surface of the property. No bituminous or concrete paving is currently anticipated at the Former Dartmouth Finishing site.

The Commonwealth understands that if PCBs are identified on this property in the future, that another TSCA determination may be required.

Question 9: When preparing a new map for configuration A2, please do not include the BMX property, Map 25A, parcel 48, as EPA does not believe it has been established that this property is necessary for the Project.

Response: An updated drawing, titled “New Bedford Marine Commerce Terminal Proposed Configuration A2” is attached (“BMX” property is not included in this drawing).

From EPA’s October 24, 2012 E-Mail:

Question 1: Portion of vacant Shuster lot not currently covered by TSCA Determination (referred to as the "excluded portion"). We now understand the Commonwealth has proposed to perform the following work on this excluded portion due to structural considerations: Excavating all soil down to the high water mark, compacting as necessary to meet structural requirements, and backfilling, with additional compaction as may be required. Per the Commonwealth plan, PCBs greater than 25 ppm located within the South Terminal main facility area will be removed and properly disposed of offsite. We also understand that the excluded portion is currently privately owned and will remain privately owned and that the Commonwealth will be acquiring the vacant Shuster lot (Map 31, Lot 288) except for the excluded portion.

While there were no samples specifically collected within the excluded portion, EPA highly recommends that it may be in the Commonwealth's interest to either characterize, excavate and properly dispose of the soils excavated from the excluded portion or excavate and dispose of the soils as a \geq 50 ppm PCB waste in accordance with § 761.61(b) rather than placing it back into the excavated area.

Response: So noted. The area currently referred to by EPA as the “excluded area” of Map 31 Lot 288 is currently privately owned. The Commonwealth will have an agreement with the current property owner to undertake site improvement activities on that portion of the property. The Commonwealth wishes to conduct improvements on this “excluded area” so that it does not weaken the structural stability in adjacent areas of the New Bedford Marine Commerce Terminal.

Many samples have been collected from the overall property of which the “excluded area” is a part. The environmental investigations conducted on the overall property were conducted using methods that are commensurate with the standard of care for environmental investigations. These investigation methods included historical records research, remote sensing underground imaging surveying, and direct subsurface sampling. Direct samples were not collected on this portion of the property because typical indicators for the presence of contamination were not identified from the historical or subsurface remote sensing activities. Although no samples have been collected from the “excluded area” and analyzed for PCBs, the closest soil samples to the “excluded area” contains PCB concentrations considerably lower than 1 mg/kg, (typically closer to 0.1 mg/kg or lower). As a result, the existing

evidence does not indicate the presence of elevated concentrations of PCBs in soil on the “excluded area”.

Therefore, the Commonwealth proposes one of the two following courses of action involving either obtaining temporary ownership or easement rights during construction, or work with the property owner to conduct the work in accordance with requisite environmental standards, as follows :

1. **If the Commonwealth is capable of obtaining temporary ownership of this “excluded area”** - the Commonwealth will retain ownership and/or site control until such time as the Commonwealth has completed construction within the “excluded area”. Material excavated within this location will be removed from the “excluded area” to the area of the TSCA Determination and will be used as backfill within the TSCA Determination location area. Clean fill will be imported from offsite and utilized to backfill the “excluded area”. Any material deemed “geotechnically unsuitable” will be separated and characterized for offsite disposal.
2. **If the “excluded area” remains in private hands** – the Commonwealth or the private property owner will excavate the area and backfill the area with the excavated material and any imported clean fill from offsite necessary to restore the proposed final grade. Any material deemed “geotechnically unsuitable” will be separated and characterized for offsite disposal. The excavated material, and any “geotechnically unsuitable” material, will be stockpiled separately to prevent mixing of the material with any material excavated from the TSCA Determination area.

Question 2: Based on the 21E, Phase 1 assessments provided to EPA on 10/1/12, there are findings and RECs concerning the presence of contamination. EPA highly recommends that the Commonwealth pursue due diligence by conducting further investigations on any parcel where a finding or REC was noted in the 21E assessments, and that remediation, if contamination is found, occur in accordance with 21E, and with EPA's TSCA program if PCBs are found. At a minimum, this includes the Radio Tower parcel and the debris on the Hathaway parcel (Parcel 30) and the former Dartmouth Finishing site (Map 21, Lot 45). If EPA's Final Determination approves this Project, these requirements will be a condition of that Determination.

Response: The Commonwealth acknowledges EPA’s recommendations and requirements.

Question 3: In addition to No.2 above, EPA would like to be advised if any of the contaminants/pollutants are hazardous waste as characterized by either a RCRA TCLP test or by the RCRA 20 times rule.

Response: The Commonwealth has submitted to EPA the historic review information, analytical test data, and investigation information it has gathered to date regarding the subject properties. The Commonwealth will continue to submit to EPA (throughout the site development process) additional relevant environmental information as it becomes available. The Commonwealth has submitted

analytical data either gathered by the Commonwealth via historic reviews of prior investigations or generated by the Commonwealth on the properties within which the Commonwealth anticipates constructing the New Bedford Marine Commerce Terminal and/or any of its associated mitigation measures.

Based on discussions with the MassDEP and EPA, it has been concluded that environmental response actions in association with the historic impacts to soil and groundwater to be implemented at the site will be performed in accordance with the Massachusetts Contingency Plan (MCP) 310 CMR 40.0000. Specifically, these activities will be conducted either as Comprehensive Response Actions (CRA) MCP 310 CMR 40.0800 or as a Release Abatement Measure MCP 310 CMR 40.0440.

The Commonwealth is aware of some contaminants (particularly lead) which have been detected in concentrations exceeding the RCRA 20 times rule (i.e. concentrations of 100 mg/kg or greater, which is 5 times the TCLP limit of 5 mg/L) at the Former Dartmouth Mills Site. The Commonwealth knows of no TCLP tests that have been completed on this material to date. This material will be tested for TCLP if it is anticipated to be transported offsite for disposal. However, the Commonwealth currently anticipates that, due to the absence of Pb-impacted groundwater onsite that the primary risk from Pb-impacted soil is from direct contact. Additionally, if the material is not “generated”, it will not be subject to RCRA Land Disposal Regulations.

The Commonwealth will conduct activities in accordance with the guidance document issued by MassDEP which indicates that, so long as the soils are being re-graded onsite (which they are), will not be treated ex-situ (they will not) or otherwise placed into containers, tanks or a treatment or RCRA-regulated unit (they will not), and will remain within the defined Area of Contamination (AOC) onsite (they will), these soils will not be “generated”, exempting them from the Land Disposal Regulations, which will allow them to be managed under the MCP and TSCA alone. For more details on the interface between RCRA and the MCP in the Commonwealth, please refer to “MassDEP Technical Update August 2010: *Considerations for Managing Contaminated Soil: RCRA Land Disposal Restrictions and Contained-In Determinations*”, attached as Attachment C to the Commonwealth’s June 25, 2012 submission to EPA.

Therefore, consistent with MCP standard practices, the Commonwealth plans to manage Pb-impacted soils onsite via: the re-grading of onsite soils; implementation of a 3-foot thick cap of granular material; and a deed restriction that will minimize direct contact with that material via an Activity and Use Limitation. This remedy will be assessed for its potential and future risk to current and future receptors via a Method 3 Risk Assessment, which will be completed prior to closure of the site. If any significant unanticipated risk to future receptors is identified during the Method 3 Risk Assessment, consistent with MCP standard practices, the proposed remedy will be re-evaluated.

The work to be performed at the New Bedford Marine Commerce site will be managed and supervised by a LSP under the regulations defined in 310 CMR 40.0000. The LSP will work closely with project team members, contractors, representatives from the City of New Bedford, EPA and the MassDEP. All documentation required under the MCP will be prepared and submitted to ensure and maintain regulatory compliance. Response actions undertaken under the supervision of the LSP will be performed to achieve a condition of No Significant Risk (NSR) at the site as defined under the MCP. Achieving a condition of NSR may require the implementation of one or more Activity and Use Limitations (AUL).

Question 4: As EPA understands, the mitigation plan includes development of a salt marsh at River's End Park. As you know, under EPA's Superfund Program, remedial work was conducted and a salt marsh was established. However, PCB concentrations potentially are present in the Commonwealth's proposed mitigation area. If PCBs are present in this area, coordination with both EPA's Superfund and TSCA programs will be necessary. If EPA's Final Determination approves this Project, a requirement for submittal of a sampling plan and sediment removal plan (as applicable) will be a condition of that Determination.

Response: The Commonwealth acknowledges EPA's statement.

Question 5: Please confirm that the Radio Tower parcel (Map 31, Lot 234) will not be used for heavy loading and is considered an ancillary property to be used for storage purposes.

Response: The Map 31, Lot 234 (Radio Tower) property will be considered part of the overall NBMCT site and used for storage purposes (for regulatory purposes an ancillary property¹), and is not currently being considered for heavy loading.

Question 6: We understand the eastern paved portion of the Shuster lot (Map 31, Lot 263) will now be included in the main terminal facility and that a ramp will likely be constructed to connect the vacant Shuster parcel to the paved Shuster parcel (eastern area of the active Shuster Site), which will be used for certain loading activities. Please describe the materials that will be used to construct the ramp. Also please confirm that the Commonwealth will maintain and monitor the paved area of the Shuster lot, the paved area on Lot 7, and the transportation corridor referred to as the Blackmer St. extension in the same manner as the Commonwealth committed to do for the transportation easements in its October 17 submittal.

Response: The Commonwealth intends to utilize Dense Graded Aggregate (imported from offsite) for the ramp between the vacant Shuster parcel to the paved Shuster parcel. The Commonwealth will maintain and monitor this paved area of the Shuster lot.

The Commonwealth will be obtaining ownership of the Blackmer Street extension from the City of New Bedford but will be making no changes to that parcel. The Commonwealth expects this will continue to serve as a public way (this area is currently paved and contains city-operated utilities). As stated in the Commonwealth's response dated October 17 to EPA's questions dated October 5, the Commonwealth will pave these areas (if not paved) and will maintain and monitor these paved areas.

Map 25A, Lot 7 is currently paved and is anticipated to be used as an ancillary property which will be used for blade laydown. The Commonwealth will maintain and monitor this paved area.

Attachment

New Bedford Marine Commerce Terminal Proposed Configuration A2

(Updated Map)



HIGH STREET
SUITE 502
BOSTON MA 02110
(617) 728-0070

REVISIONS

NO.	DATE	DESCRIPTION

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- MAIN FACILITY FULL LOAD RATING
- MAIN FACILITY REDUCED LOADING
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PREPARED FOR:

COMMONWEALTH
OF
MASSACHUSETTS

DRAWING TITLE:

NEW BEDFORD MARINE
COMMERCE TERMINAL
PROPOSED
CONFIGURATION A2

Scale: 1"=150'

Date	3/24/10	Drawing No.
Proj. Mgr.		
Design		
Check	CM	
Drawn		
Job No.		
as rev.	10/25/12	