



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

**MEMORANDUM**

**Date:** 2 November 2012

**Subject:** New Bedford South Terminal State Enhanced Remedy Consultations and Communications

**From:** CAPT Michael A. Stover, PE, Indian Program Manager **MS**

**To:** Administrative Record

The following timeline outlines the activities (consultations, activities involving tribal monitoring, and related meetings) that have taken place since March 2011 among the Commonwealth of Massachusetts, the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag Tribe, and the EPA regarding the New Bedford South Terminal State Enhanced Remedy Consultations.

December 2010: First consultation activity involved an on-site visit with EPA and tribes at proposed terminal and included Lois Adams, EPA Region 1 Chief of Grants, Tribal, Community and Municipal Assistance Branch, Chuckie Green, Mashpee Tribe Historic Preservation Officer and Co-Director of Natural Resources, and Bettina Washington, Wampanoag Tribe of Gay Head (Aquinnah) Historic Preservation Officer. Tribes expressed concern that they had not received reports from Commonwealth.

15 March 2011: Consultation meeting was held among EPA, Commonwealth, Tribal Historic Preservation Officers and involved Gary Davis, General Counsel, Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs, representatives from APEX and JMA (consultants for the Commonwealth), Ms. Lois Adams, CAPT Michael Stover, and THPOs. Main issues discussed were tribal concerns regarding design of bulkhead in relation to paleosols, and line of communication between Commonwealth and tribes over activities associated with the project. The bulkhead configuration was modified to avoid paleosols, and the Commonwealth committed to improved communications.

3 August 2011: Consultation conference call was conducted involving Gary Davis, THPOs and CAPT Michael Stover to discuss the scope and plan for upcoming geotechnical investigations planned for mid August. Tribes were invited to observe the activities.



16-18 August 2011: Geotechnical borings and pile-driving pilot tests were conducted in the vicinity of the bulkhead to collect additional engineering information (not intended to provide any relevant information with regard to permitting or assessment of archeological resources). No samples were collected during this activity. The tribes were alerted and onsite so they could observe the proceedings.

October 2011: Vibracore sampling was completed to collect additional samples for environmental analysis, and samples were also collected in the same location where previous vibracores have been collected; as a result, there was no need to re-catalog the soils. The tribes were alerted and onsite so they could observe the proceedings.

10 April 2012: The Mashpee Wampanoag Tribe notified the Commonwealth that the THPO duties have been reassigned from Mr. Chuckie Green to Ms. Ramona Peters.

11 April 2012: The Commonwealth extended an invitation to the tribes to attend a public meeting in New Bedford along with the advocacy group Hands Across the River for a conversation with representatives from the Massachusetts Office of Energy and Environmental Affairs (EEA) to discuss the Confined Disposal Facility project at the South Terminal in New Bedford.

3 July 2012: A consultation meeting was held in Woods Hole involving the four parties to discuss tribal comments and concerns regarding the 18 January 2012 report issued by the Commonwealth on the State Enhanced Remedy Project. The tribes requested and received detailed information from the Commonwealth regarding the design of the confined disposal facility; mitigation of impacts to fish while the cells were under construction and receiving contaminated soils, as well as impacts to fish from blasting activities; and concerns over leaving contaminated paleosols in place.

13 August 2012: A consultation meeting was held in Woods Hole involving the four parties to discuss remaining tribal comments and concerns regarding the 18 January 2012 report issued by the Commonwealth on the State Enhanced Remedy Project, in support of the submission of EPA's Draft Determination. The anticipated contamination of the paleosols was relayed as minimal by EPA, as the contamination is mostly retained in soil horizons above the paleosols. Key issues raised were archaeological surveys of upland areas and a request to have bulrush and cattail to be incorporated in the wetlands mitigation plan.

25 September 2012: Tribes were asked via email and follow-up phone messages from EPA if they had any comments on the September 18<sup>th</sup> submission by the Commonwealth of *"Additional cultural resources information [upland areas] for the New Bedford South Terminal Project."*

27 September 2012: The Mashpee Wampanoag Tribe issued a standard checked statement on letterhead: *"The Mashpee Wampanoag Tribe considers this project to be in conformance with the MWT's Section 106 review process with agreed upon mitigation mitigations."*

28 September 2012: Tribes were sent via email no effect on historic properties determination letter by James Owens, EPA Region 1 Office Director, OSSR.

1 October 2012: The Wampanoag Tribe of Gay Head (Aquinnah) verbally indicated to the Region 1 Indian Program Manager at an unrelated meeting that the Tribe had no comments on the *"Additional cultural resources information [upland areas] for the New Bedford South Terminal Project."* document.

9 October 2012: Indian Program Manager communicates to THPOs via email regarding the wetland mitigation plan and the tribal request for bulrush and cattail in the plan, relaying that the planned wetland mitigation is for saltwater wetlands, and both bulrush and cattail are freshwater wetland plants. The THPOs were asked if there were any further comments, given that the two requested species were compatible with freshwater wetlands, not saltwater wetlands.

26 October 2012: Indian Program Manager receives email transmission from Wampanoag Tribe of Gay Head (Aquinnah) stating that "...we [the Tribe] will have to work out some kind of mitigation." No further communication was received from Ms. Washington.

28 October 2012: 30-day comment period expires on no effect on historic properties determination letter of 28 September 2012. No comments related to historic properties were received from THPOs during this period.

29 October 2012: Indian Program Manager sends email transmission to THPOs informing them of the pending deadline for EPA to issue its decision determination, and requests any further comments by COB 29 October 2012. No comments were received by THPOS to the date of this memorandum.