



Fw: Crossing the finish line on South Terminal
Nancy Grantham to: Dierker.carl

10/05/2012 03:46 PM

History: This message has been forwarded.

-----Forwarded by Nancy Grantham/R1/USEPA/US on 10/05/2012 03:46PM -----

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To: Rick.Sullivan@state.ma.us
From: Curt Spalding/R1/USEPA/US@EPA
Date: 10/05/2012 03:32PM
Cc: Nancy Grantham/R1/USEPA/US@EPA, Ira Leighton/R1/USEPA/US@EPA
Subject: Crossing the finish line on South Terminal
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Good Afternoon Rick,

In our September 19, 2012, email to the Commonwealth, EPA indicated the need to receive all missing information on the South Terminal Project 30 days prior to issuance of the Final Determination on the project. We felt this was a reasonable timeframe for the EPA team to complete our review, conduct final consultations with other federal agencies and draft what will necessarily be a lengthy Final Determination, including responses to public comments and permit conditions. In its response to EPA's email, the Commonwealth explained that it was impossible to get all information to EPA 30 days in advance of the Commonwealth's goal for issuance of the Final Determination (end of October) due to the extraordinary amount and complexity of the information needed, but was open to adjusting some of the deadlines. Understanding this challenge, EPA has discussed various deadlines for information with the Commonwealth and has taken a second look to determine the absolute minimum amount of time needed to produce a Final Determination and offer this schedule in the spirit of accommodating the Commonwealth's needs and limitations while still allowing staff necessary review and drafting time. However, it is important to note that any delays beyond these deadlines will likely lead to a delay in the issuance of the Final Determination on the South Terminal project beyond the Commonwealth's desired goal.

- 1) Finalize site ownership/control -- or statement of authority and intent: 10/19
- 2) Confirmation on easement parcels in lieu of 21E assessments: 10/17
- 3) Mitigation plans - Draft: 10/9 and Final: 10/22
- 4) Information on non-blasting alternatives: 10/12
- 5) Response to NMFS letter: 10/12; Supplemental acoustical studies: 10/22
- 6) Response to comments: 10/22
- 7) New Proposal for Silt Curtains/Fish Protective Measures: 10/17

DISCUSSION

1) Site Ownership/Control: EPA has asked for confirmation of exactly which parcels will comprise the terminal site and confirmation that the Commonwealth owns or controls all of the parcels that will be part of the South Terminal project. Site configuration has shifted several times since the project was announced; the latest change was last month's inclusion of the "radio tower" parcel and questions over use of the BMX parcel. This is important because the shifting of properties in and out of the project affects EPA's ability to determine whether or not resources are included and what impacts would occur.



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EPA position: We intend to issue a final determination based on "Configuration A2" with the exception that the BMX parcel will not be included as part of the project since it is our understanding that it will be used by another property owner to mitigate operational impacts of the terminal project. Our understanding is also that no work will occur in wetlands on that parcel, but if that changes, normal permitting procedures would need to be followed. By October 19, the Commonwealth must provide information demonstrating that it has ownership or control over all parcels that make up the project area - or a statement that the Commonwealth has the authority and intent to take ownership or control over all parcels needed for the project.

2) Confirmation on Easement Parcels in Lieu of 21E Assessments: The Commonwealth has provided 21E site assessments for eight parcels (which we assume are the parcels to be included in the project) but not for two areas on other parcels where it will only hold easements to allow passage of trucks and equipment for access to construct and operate the marine terminal. The Commonwealth and/or the owner have been reluctant to perform 21E site assessments for the two easements. EPA is concerned that, because portions of these easements are unpaved, any contamination that may be present could be released through this use during construction and operation of the terminal. In the absence of 21E assessments of these areas, EPA would like confirmation from the Commonwealth, that in consultation with EPA's TSCA program, the Commonwealth will (1) apply asphalt to all unpaved areas of these easements; (2) repair any cracks or deterioration of these areas; and (3) monitor and maintain, pursuant to an agreed upon schedule, all asphalt on these easements throughout the duration of the easement interest.

EPA position: We need a confirmation from the Commonwealth that it will institute the above measures by October 17.

3) Draft/Final Mitigation Plans: Our draft determination required fully detailed draft mitigation plans, in accordance with CWA 404 regs, to be submitted by the Commonwealth and reviewed by EPA and NMFS and then final mitigation plans to be produced before our final determination could be issued. We have not yet received the draft mitigation plans. The Commonwealth originally proposed providing draft mitigation plans by October 10 and 15, which would have left us with little time to review and consult with NMFS, provide comments and receive revised final plans. In response to our needs, it more recently promised us the draft mitigation plans by October 8. The Commonwealth also stated it will provide preliminary drafts of certain components of the plans by October 5.

EPA position: We need draft mitigation plans that include all required elements by October 9 (since the 8th is a holiday) in order to be able to produce a final determination by the end of October. We also need rapid turn-around on any changes required to draft plans so that final plans can be submitted by October 22 in order to meet end of October goal for final determination.

4) Blasting: In the draft determination, EPA told the Commonwealth we need further information on its request to include blasting as an option for dealing with any bedrock that might be found during dredging/construction of terminal bulkhead and channels. Both the Corps and NMFS raised concerns about blasting including potential effects on the Hurricane Barrier and Atlantic Sturgeon and other fish species, respectively. More recently, the Commonwealth indicated that due to the time constraints involved in getting approvals from those two agencies, it could live with a final determination that did not allow blasting, as long as it had the ability to seek a modification to EPA's final determination in the future to include blasting if blasting turns out to be necessary. EPA has advised the Commonwealth that before EPA could consider such a modification, the Commonwealth would need to

provide evidence to both the Corps and NMFS that blasting would not harm the Hurricane Barrier or fish, respectively, and secure approval from the two federal agencies.

EPA position: We are willing to go forward with a final determination that does not include blasting if, before the determination, we receive a detailed description of alternate non-blasting methods of subtidal rock removal (instead of blasting) and the impacts of alternate non-blasting methods on aquatic resources. This approach is premised on the assumption that the impacts of the alternate methods will not be significantly adverse. Furthermore, we need, in advance of the determination, a statement from the Commonwealth that it is committed to utilizing the alternate techniques if the Commonwealth determines in the future that it prefers to blast but is unable to obtain all required approvals. The Commonwealth must provide the information about the alternate techniques and their impacts, as well as the commitment to use them in the event that it is unable to obtain all necessary approvals for blasting, no later than October 12 (other than acoustical studies, which are scheduled for delivery on October 22).

5) Response to NMFS letter, Dredging Windows and Acoustical Studies: We told the Commonwealth that it would need to respond to recommended conditions in NMFS's letter concerning Endangered Species Act and Essential Fish Habitat, including narrow dredging windows and other mitigation measures. Now that the Commonwealth has convened consultations with NMFS staff directly, NMFS issued a revised letter and the Commonwealth agreed to provide the scientific basis for EPA to respond to NMFS's EFH recommendations and to complete informal consultation under the ESA. While we have received a draft letter on September 28, we have not yet received a final letter.

EPA position: We need to receive a final letter from the Commonwealth that provides the scientific basis for responding to NMFS's EFH recommendations and completing informal consultation under the ESA by October 12 and supplemental acoustical studies by October 22. We will then need to get rapid review and concurrence from NMFS on modified EFH conditions and concurrence on our conclusions related to the ESA.

6) Response to Comments: We are asking the Commonwealth for assistance on drafting responses to a limited number of specific comments we received during the public comment period for which it should have information.

EPA position: We will provide the Commonwealth with a list of specific public comments on which we are seeking its help to draft responses by October 10, and we need its draft response to those comments by October 22.

7) New Proposal for Silt Curtains/Fish Protective Measures: In the last couple days, EPA has become aware of a potential proposal to mitigate impacts on fish involving use of silt curtains, bubble curtains and techniques to move the fish to areas outside the silt curtains. Because such methods may affect the performance standards upon which the water quality and turbidity standards in the Draft Determination were based (and on which the draft TSCA risk-based determination is based), EPA needs sufficient detail about the design, location, any changes to monitoring methods and other relevant information about this proposal before it can issue a final TSCA Determination for the project or a Final Determination on the performance standards.

EPA position: EPA needs this information by October 17 in order to review and identify if further information is necessary and/or revise the performance standards and draft TSCA determination.

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