



September 18, 2012

Ms. Ann Williams  
US EPA – Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109

**Re: Special Use Permits# 10-004, 10-005, 10-006  
USEPA Regulatory Review Report**

***Project Name: New Bedford Harbor State Enhanced Remedy in New Bedford South Terminal, a/k/a Confined Disposal Facility, a/k/a South Terminal Marine Industrial Park Development, a/k/a New Bedford Marine Commerce Terminal, New Bedford, MA. (Project).***

Dear Ms. Williams:

At the request of the U.S. Environmental Protection Agency (USEPA), and on behalf of the Commonwealth of Massachusetts, Apex Companies, LLC is providing (as a follow-up to previous submittals) the enclosed copy of documentation associated with the New Bedford Harbor State Enhanced Remedy (a/k/a Confined Disposal Facility, a/k/a South Terminal Marine Industrial Park Development, a/k/a New Bedford Marine Commerce Terminal), located in New Bedford, Massachusetts.

In a letter dated August 13, 2012, USEPA requested that the enclosed documentation be forwarded to your office for your review. The enclosed information falls into the following categories:

- For the record, proof that the Commonwealth's Restated Application (of January 18, 2012) was previously submitted to the various historic preservation and archaeological consulting parties (SHPO, THPO, MBUAR);
- A copy of the submissions the Commonwealth has made to the USEPA since the January 18, 2012 restated Application up to the present;
- As a courtesy, a copy of the USEPA's Draft Determination for the project;
- Copies of the Commonwealth's responses to USEPA questions concerning historic preservation and archaeological aspects of the project;
- The Final Potential Project Site Configurations currently planned for the Project, including the main terminal and adjacent/ nearby laydown areas; and
- A copy of the recently completed "Cultural Resources Background Study and Archaeological Sensitivity Assessment," completed by JMA, Inc. which covers all areas

of the Upland Site (including the adjacent/ nearby laydown areas). [This document is included in the enclosed **Attachment G**].

The information enclosed herein is presented in chronological order of the dates the documents were created and/or submitted to the USEPA.

The following represents a list of specific information enclosed.

1. On January 18, 2012, the Commonwealth submitted a re-stated application for the aforementioned project to USEPA. The USEPA has requested that the Commonwealth confirm submittal of this re-stated application to the consulting parties (SHPO, THPOs, and MBUAR). To that end, the following information is enclosed:
  - a. On February 2, 2012, the Commonwealth forwarded electronic copies of the Commonwealth's January 18, 2012 submission to USEPA to both the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gayhead (Aquinnah). Cover letters from these two packages, as well as information related to the confirmed delivery of both packages are attached (see **Attachment A**).
  - b. On June 14, 2012, the Commonwealth forwarded electronic copies of the Commonwealth's January 18, 2012 submission to USEPA to the Massachusetts Board of Underwater Archeological Resources (MBUAR) and to the Massachusetts Historical Commission (MHC). Copies of the cover letters from these packages are attached (see **Attachment A**). MBUAR acknowledged receipt of the information within an e-mail dated June 19, 2012 (see **Attachment A**). MHC acknowledge receipt of the electronic version of this information in a letter dated July 6, 2012 (see **Attachment A**), and requested a hard copy of the information.
  - c. On August 6, 2012, the Commonwealth forwarded a paper copy of the January 18, 2012 submission to MHC. A copy of the cover letter and a copy of the delivery notification is attached (see **Attachment A**).
2. On June 18, 2012, the Commonwealth submitted responses to questions posed by USEPA. The USEPA has requested that the Commonwealth submit copies of this correspondence to the consulting parties (SHPO, THPOs, and MBUAR). A copy of the Commonwealth's submission is attached (**Attachment B**).
3. On June 26, 2012, the Commonwealth submitted responses to questions posed by USEPA. The USEPA has requested that the Commonwealth submit copies of this correspondence to the consulting parties (SHPO, THPOs, and MBUAR). A copy of the Commonwealth's submission is attached (**Attachment C**).
4. On July 16, 2012, USEPA issued a Draft Determination for the above-mentioned project. For convenience, a copy of the USEPA Draft Determination is attached (**Attachment D**).
5. The USEPA has requested that the Commonwealth update the consulting parties concerning changes to the overall project boundaries, including the main terminal, dredge

areas in front of the terminal, and laydown areas associated with the terminal. As shown on the updated plans included in the package (**Attachments C & D**), the updated dredge design in front of the proposed terminal was slightly modified since the proposed project design originally conceived. This slightly realigned dredge footprint is substantially the same as that submitted previously, and falls entirely within the study area that was previously surveyed for potential impacts to cultural resources, and as such does not change the previously submitted findings.

EPA has requested that written confirmation be provided that the October 2010 Assessments of Prehistoric Archeological Site Potential for the subtidal/intertidal portions of the site were broad enough to cover potential work areas (including potential dredging of federal channel and additional deep draft dredging). The Commonwealth asserts that the investigations conducted to date were broad enough to cover the work to be completed, and following information is provided to respond to EPA's request:

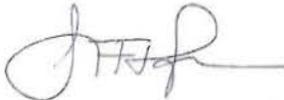
- a. Investigations to date have been conducted within the subtidal portion of work (for area of investigation, please see Figure 4 on page 32 of the Assessment of Prehistoric Archeological Site Potential: Subtidal Portions of the Proposed South Terminal Infrastructure Park, New Bedford Massachusetts, dated October 2010).
  - b. Investigations to date have also been conducted within the intertidal portion of the work (for area of investigation, please see Figure 4 on Page 30 Assessment of Prehistoric Archeological Site Potential: Intertidal Portions of the Proposed South Terminal Infrastructure Park, New Bedford Massachusetts, dated October 2010).
  - c. For your convenience, a map is attached to this letter (see **Attachment E**) that shows that the intertidal and subtidal investigation areas, updated dredge footprint design and all currently conceived potential subtidal and intertidal expansions (see below for upland assessment information). ***Please note that all areas of the proposed dredge footprint as well as all proposed expansions fall entirely within the area of cultural resources investigation that has been completed for the Project.***
  - d. Potential dredging within the Federal Channel and Federal Turning Basin (which may or may not occur as a part of this project) will not impact prehistoric archeological sites, as the areas have been previously dredged multiple times by the United States Government; should the Commonwealth conduct any dredging within the Federal Channel or turning basin, the Commonwealth will be removing only material that has settled within the Federal Channel or Federal Turning Basin since the last instance of maintenance dredging by the United States Government.
6. EPA has noted that the upland assessment conducted in 2010 did not assess the full upland areas of the proposed facility. Therefore, EPA has requested a completed archeological assessment of any new areas not included in the 2010 assessment. The following information is provided to respond to this request:
- a. Attached please find three potential final site configurations; one of which, with perhaps only minor alterations, is likely to be the final configuration of the upland properties to be included within the final terminal (see **Attachment F**).
  - b. Due to the uncertainty regarding the exact final configuration that will be included within the upland area for the facility, the Commonwealth has commissioned the

following Cultural Resources Background Study and Archeological Sensitivity Assessment, dated September 2012 (see **Attachment G**). This study covers a much larger area than any of the three potential final site configurations, an area bounded by South Street on the north, S. Front Street and Potomska Street on the West, Cove Street on the South and New Bedford Harbor on the East. All the properties considered within each of the three potential final site configurations fall within this larger area.

- c. The Commonwealth is certain that the final configuration will fall within this larger area; therefore, the investigation provided within the study is anticipated to be comprehensive of the final upland footprint for the New Bedford Marine Commerce Terminal.
- d. The Cultural Resources Background Study and Archeological Sensitivity Assessment, dated September 2012 identified one area within this large upland location that may be culturally sensitive. The study indicates that further investigation would be required if greater than 12 inches of soil were to be disturbed within this sensitive area. The area identified is former housing associated with the former Acushnet Mills facility (see **Figure 11, Attachment G**). The project as envisioned (in each of the three potential final site configurations) will not impact this culturally sensitive area, as none of the three locations will involve disturbance of soil within the culturally sensitive area.

If you have questions regarding this correspondence, please contact Mr. Gary Davis, Esq. at the Massachusetts Executive Office of Energy and Environmental Affairs at (617) 626-4983.

Sincerely,  
**Apex Companies, LLC**



Gregory F. Harper, MA, RPA  
Cultural Resource Specialist

Attachments: Attachment A – Confirmation Documentation for January 18, 2012 Distribution  
Attachment B – Commonwealth’s Responses to USEPA Questions, June 18, 2012.  
Attachment C - Commonwealth’s Responses to USEPA Questions June, 26, 2012.  
Attachment D - USEPA Draft Determination, July 16, 2012.  
Attachment E - Map Showing Proposed Dredge Footprint  
Attachment F - Maps Showing Three Potential Site Configurations  
Attachment G - Cultural Resources Background Study and Archeological Sensitivity Assessment, September 2012

Electronic Copy to: 1.) Ms. Bettina Washington, Wampanoag Tribe of Gayhead (Aquinnah),  
20 Black Brook Road, Aquinnah, MA 02535-1546  
2.) Ms. Ramona Peters, Mashpee Wampanoag, 766 Falmouth Road #A7,  
Mashpee, MA 02649  
3.) Mr. Victor Mastone, Massachusetts Board of Underwater Archaeological  
Resources, 251 Causeway Street, Suite 800, Boston, MA 02114-2136  
✓4.) USEPA

Hard Copy to: 1). Brona Simon, SHPO & Executive Director, Massachusetts Historical  
Commission, 220 Morrissey Boulevard Boston, Massachusetts 02125

Cc of Cover Letter (No Attachments):

Gary Davis, Jr., General Council, Executive Office of Energy and Environmental Affairs  
Chet Myers, Project Engineer, Apex Companies, LLC  
Jay Borkland, Project Principal, Apex Companies, LLC