



4/7/2011

Mr. Skip Sahlin, Project Director
Pacific International Terminals, Inc.
1131 SW Klickitat Way
Seattle, WA 98134-1108

Dear Mr. Sahlin:

Enclosed is a final copy of Right of Entry No. 23-086821 for your records.

Please record this document at the Whatcom county auditor's office and return the information to our office within Thirty (30) days of your receipt of this letter. Section 18 of this agreement details the requirements, which include providing us the recording number and date.

If you should have any questions, feel free to contact Terry Carten at 360-854-2846.

Sincerely,

A handwritten signature in cursive script that reads "Lesslie Kahns".

Lesslie Kahns, Land Technician
Orca-Straits District

cc: District file
TRO file, 23-086821



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AQUATIC LANDS RIGHT OF ENTRY AGREEMENT

Right of Entry No. 23-086821

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and PACIFIC INTERNATIONAL TERMINALS, INC., a Washington Corporation ("Licensee").

THE Parties agree as follows:

SECTION 1 GRANT OF PERMISSION

1.1 Permission. Subject to the terms and conditions set forth below, State grants Licensee a revocable, nonexclusive license to enter upon the real property described in Exhibit A (the "Property"). In this agreement, the term "Right of Entry" means this agreement and the rights granted.

1.2 Other Interests and Rights. This Right of Entry is subject to all valid interests of third parties noted in the records of Whatcom County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington. Licensee is responsible for obtaining approvals from other persons, if any, who have an interest in the Property. This Right of Entry is subject to the rights of the public under the Public Trust Doctrine or federal navigation servitude and treaty rights of Indian Tribes.

SECTION 2 USE

2.1 Authorized Activities. Licensee shall enter the Property only for the purpose of conducting the activities described in Exhibit B (the "Activities") and for no other purpose. Licensee shall not conduct any other activities on the Property without the prior written permission of State.

2.2 Restrictions on Activities

- (a) The limitations in this Paragraph 2.2 apply to the Property and adjacent state-owned aquatic land. Licensee's compliance with this Paragraph 2.2 does not limit Licensee's liability under any other provision of this License.
- (b) Licensee shall not cause or permit:

- (1) Damage to natural resources,
 - (2) Waste, or
 - (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (c) State may take any steps reasonably necessary to remedy any failure of Licensee to comply with the restrictions on activities under this Subsection 2.2. Upon demand by State, Licensee shall pay all remedial costs and natural resources damages.

2.3 Conformance with Laws. Licensee shall keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its activities on the Property.

2.4 Interference with Other Uses.

- (a) Licensee shall exercise Licensee's right of entry under this Right of Entry in a manner that minimizes or avoids interference with the rights of State, the public or others with valid right to use or occupy the Property or surrounding lands and water.
- (b) Licensee and its agents, contractors, and subcontractors shall provide State with at least two (2) weeks notice before commencing any Activities. Licensee shall promptly notify State of any modifications in the schedule.

SECTION 3 TERM

3.1 Term Defined. This right of entry is effective on the 1st day of March, 2011 ("Effective Date"), and terminates on the 28th day of February, 2012 ("Termination Date"), unless terminated sooner under the terms of this Right of Entry.

3.2 End of Term. Upon termination of this Right of Entry and except as otherwise provided in Exhibit B, Licensee shall restore the Property to a condition substantially like its natural state before Licensee's Activities.

SECTION 4 CONSIDERATION

The consideration is a fee in the amount of Five hundred Dollars (\$500), which is due and payable on or before the effective date.

SECTION 5 ENVIRONMENTAL LIABILITY

5.1 Definitions.

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup, including oil and petroleum products.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any Hazardous Substance law.

5.2 General Conditions. Licensee shall exercise the utmost care with respect to Hazardous Substances, including the foreseeable acts or omissions of third parties affecting Hazardous Substances, consistent with the standard of care applicable under the Model Toxics Control Act, RCW 70.105D.040.

5.3 Use of Hazardous Substances.

- (a) Licensee, its contractors, agents, employees, guests, invitees, or affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances on the Property or adjacent state-owned aquatic lands, except in accordance with all applicable laws.
- (b) Licensee shall not undertake, or allow others to undertake by Licensee's permission, acquiescence, or failure to act, activities on the Property or adjacent state-owned aquatic lands that:
 - (1) Result in a release or threatened release of Hazardous Substances, or
 - (2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Licensee's activities on the Property.

5.4 In the Event of a Release or Threatened Release.

- (a) Licensee shall immediately notify State if the Licensee become aware of any release or threatened release of Hazardous Substance on the Property.
- (b) If a Licensee's act or omission results in a release of Hazardous Substances, Licensee, at its sole expense, shall promptly take all actions necessary or advisable to clean up, contain, and remove the Hazardous Substances in accordance with applicable laws.

SECTION 6 ASSIGNMENT

Licensee shall not assign this Right of Entry.

SECTION 7 INDEMNITY AND INSURANCE

7.1 Indemnity.

- (a) Licensee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any Claims arising out of the Activities or related activities by Licensee, its contractors, agents, invitees, guests, employees or affiliates.
- (b) "Claim" as used in this Subsection 7.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property, including damage resulting from Hazardous Substances, and damages resulting from loss of use of the Property.
- (c) State shall not require Licensee to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.
- (d) Licensee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.

7.2 Insurance Terms.

- (a) Insurance Required.
 - (1) At its own expense, Licensee shall procure and maintain during the Term of this Right of Entry, the insurance coverages and limits described in this Subsection 7.2 and in Subsection 7.3, Insurance Types and Limits. State may terminate this Right of Entry if Licensee fails to maintain required insurance.
 - (2) Unless State agrees to an exception, Licensee shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Licensee may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
 - (3) All general liability, excess, umbrella liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as an additional insured on.
 - (4) All insurance provided in compliance with this Right of Entry must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.

- (1) Licensee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Right of Entry covers these damages.
 - (2) Except as prohibited by law, Licensee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Right of Entry.
- (c) Proof of Insurance.
- (1) Licensee shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Right of Entry and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference additional insureds and the Right of Entry number.
 - (3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Right of Entry, as follows:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
 - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Licensee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) General Terms.
- (1) State does not represent that coverage and limits required under this Right of Entry are adequate to protect Licensee.
 - (2) Coverage and limits do not limit Licensee's liability for indemnification and reimbursements granted to State under this Right of Entry.
 - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Right of Entry, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Licensee.

7.3 Insurance Types and Limits.

- (a) General Liability Insurance.
 - (1) Licensee shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal

injury, or property damage arising on the Property and/or arising out of Licensee's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

- (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
 - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
- (1) State of Washington Workers' Compensation.
 - (i) Licensee shall comply with all State of Washington workers' compensation statutes and regulations. Licensee shall provide workers' compensation coverage for all employees of Licensee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Licensee's use, occupation, and control of the Property.
 - (ii) If Licensee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Licensee shall indemnify State. Indemnity shall include all fines; payment of benefits to Licensee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
 - (2) Longshore and Harbor Worker's Act. The Longshore and Harbor Worker's Compensation Act (33 U.S.C. Section 901 *et seq.*) may require Licensee to provide insurance coverage for longshore and harbor workers other than seaman. Licensee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act. Licensee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
 - (3) Jones Act. The Jones Act (46 U.S.C. Section 688) may require Licensee to provide insurance coverage for seamen injured during employment resulting from negligence of the owner, master, or fellow crew members. Licensee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act. Licensee is responsible

for all civil and criminal liability arising from failure to maintain such coverage.

- (c) **Employer's Liability Insurance.** Licensee shall procure employer's liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

SECTION 8 TERMINATION

8.1 Termination by Revocation. State may terminate this Right of Entry at any time upon thirty (30) days notice to the Licensee.

8.2 Termination by Completion of Activities. If Licensee completes Activities prior to the Termination Date, this Right of Entry terminates upon Licensee's completion of all Activities, including restoration of the Property under Subsection 3.2.

SECTION 9 NOTICE

Following are the locations for delivery of notice and the Contact Person. Any Party may change the location of notice and/or the Contact Person upon reasonable notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division
919 North Township Street
Sedro-Woolley, WA 98284

Licensee: PACIFIC INTERNATIONAL TERMINALS, INC.
1131 SW Klickitat Way
Seattle, WA 98134-1108

SECTION 10 MISCELLANEOUS

10.1 Headings. The headings used in this Right of Entry are for convenience only and in no way define, limit, or extend the scope of this Right of Entry or the intent of any provision.

10.2 Invalidity. The invalidity, voidness, or illegality of any provision of this Right of Entry does not affect, impair, or invalidate any other provision of this Right of Entry.

10.3 Applicable Law and Venue. This Right of Entry is to be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out

of or in connection with this Right of Entry is in the Superior Court for Thurston County, Washington.

10.4 Modification. No modification of this Right of Entry is effective unless in writing and signed by the Parties. Oral representations or statements do not bind either Party.

10.5 Survival. Any obligations of Licensee not fully performed upon termination of this Right of Entry do not cease, but continue as obligations of the Licensee until fully performed.

10.6 Exhibits. All referenced exhibits are incorporated in this Right of Entry unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

PACIFIC INTERNATIONAL TERMINALS, INC.
a Washington Corporation

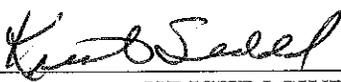
Dated: 3/11/11, 20 11


By: ROBERT E. WATTERS

Title: Vice President & Managing Director
Address: 1131 SW Klickitat Way
Seattle, WA 98134
Phone: 206-623-0179

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

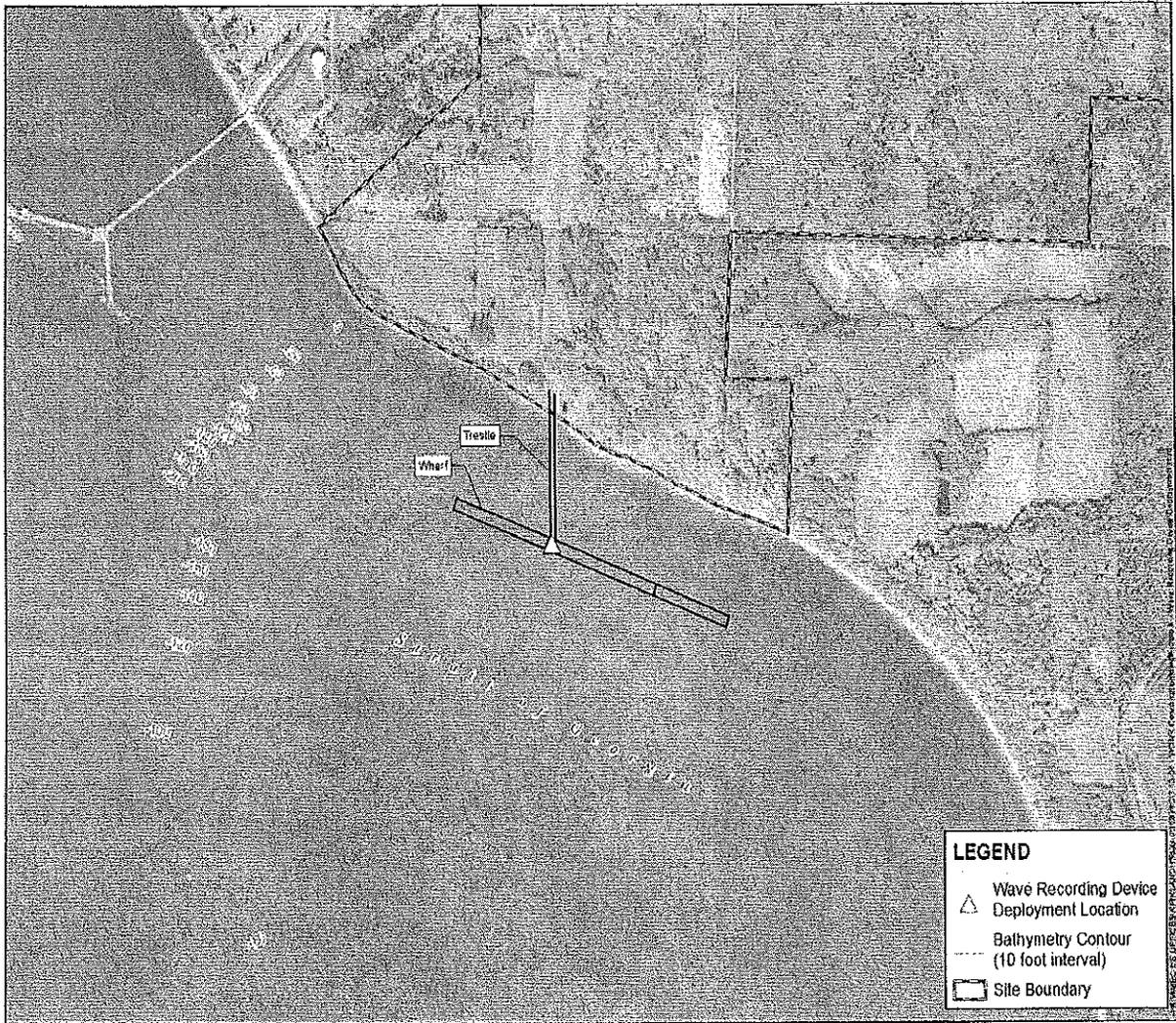
Dated: 4/1/11, 20 11


By: KRISTIN SWENDDAL

Title: Division Manager
Address: 1111 Washington Street SE
PO Box 47027
Olympia, WA 98504-7027

Approved as to form this
2 day of September, 2008
Janis Snoey, Assistant Attorney General

Exhibit A
23-086821
Pacific International Terminals



**DEPLOYMENT OF AN ACOUSTIC DOPPLER CURRENT PROFILER (ADCP) FOR
GATEWAY PACIFIC TERMINAL, WHATCOM COUNTY, WASHINGTON**

PACIFIC INTERNATIONAL TERMINALS

AUTHORIZATION NUMBER 23-086821

JANUARY 10, 2011

EXHIBIT "B" – MAINTENANCE AND OPERATIONS PLAN

The following Maintenance and Operations Plan is provided in support of a Washington Department of Natural Resources Aquatic Right-of-Entry. The plan covers work during no more than 6 months of data collection by an Acoustic Doppler Current Profiler (ADCP) to be deployed in the Strait of Georgia, Whatcom County, Washington. The study area for ADCP investigation was determined based on the likely location of the proposed Gateway Pacific Terminal pier and deepwater dock. The wave, current and water level measurements from the ADCP are to provide data for the design of marine facilities, and to establish operating conditions for vessels at the site.

Schedule

The ADCP will be deployed as soon as authorization for a Right-of-Entry is granted by DNR. Deployment is anticipated to last 60 days but would be no longer than 6 months. After the ADCP has been deployed for a minimum of 60 days, recovery of the mooring will take place.

Deployment and Operations

The bottom conditions at the site will be checked before deployment using an echo sounder in order to get an idea of the bottom sediment, presence of rocks, etc. Soft, silty sediment will be avoided if possible and if necessary latticing can be added to the bottom of the frame to increase the footprint and reduce sinking.

To deploy the device the frame will be lifted over the stern of the boat using a winch/capstan and lowered slowly. An acoustic tilt-pinger will send "pings" back every second to ensure the ADCP orientation is within 15-20 degrees of vertical. When the frame touches bottom, and the tilt-pinger confirms it is upright, the release and lowering line will be retrieved. A ground line and pop-up buoy are released for retrieval of the device.

Once the ADCP is deployed, directional wave data will be collected every 2 hours using 35 minute bursts with sampling at 2 hertz. The ADCP will collect measurements of current profiles, bottom pressure (water level), instrument title, compass heading, and temperature every 10 minutes over a total duration of 60 or more days.

This 2-month deployment will require additional power by way of an external battery pack which will be securely fitted into the bottom mooring frame and connected to the ADCP instrument via the Y-cable. The preferred instrument for this purpose is the Teledyne RDI Workhorse Sentinel ADCP.

Maintenance

The ADCP instruments are factory calibrated. Prior to the deployment, the ADCP will be bench tested following the complete set of Teledyne-RDI procedures to test all of the onboard sensors and electronics. The compass calibration will be performed close to the deployment site, and the use of ferrous materials in the mooring will be minimized to reduce compass deviations.

Mooring Recovery Procedure

The recovery procedure is essentially the reverse of the deployment. Upon arrival at the site, the acoustic release on the pop-up buoy is enabled, and a range command is sent to determine how far away it is. The boat may need to maneuver to be closer, or further away if it is directly over top of the mooring, then a release command is sent to the acoustic release. The acoustic release should reply with a signal confirming that it has been released and is upright. Once the pop-up buoy is sighted at the surface, the light line is attached to the pop-up canister and clump weight is pulled aboard. Then the heavier ground line is hauled in using the boat's davit/winch. Finally, the mooring frame is raised to the surface and brought on board the vessel.

If the pop-up buoy fails to surface, the groundline can be dragged up with a grapple from the recovery vessel. The tilt pinger attached to the instrument frame provides an acoustic reference beacon as monitored by a listening device on the vessel to position the vessel for dragging operations.