



7/6/2011

Mr. Ari Steinberg
Pacific International Terminals, Inc.
1131 SW Klickitat Way
Seattle, WA 98134-1108

Dear Mr. Steinberg:

Enclosed is a final copy of Aquatic Lands Right of Entry No. 23-087429 for your records.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Kahns", written over a horizontal line.

Leslie Kahns, Land Technician
Aquatic Resources Division

enclosure

cc: District file
TRO file, 23-087429



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

AQUATIC LANDS RIGHT OF ENTRY AGREEMENT

Right of Entry No. 23-087429

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 July, 2011 ("Effective Date"), and terminates on the 30th day of June, 2016 ("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 Nine hundred Dollars (\$900), 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
Orca-Straits District
919 North Township Street
Sedro-Woolley, WA 98284

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

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: June 29, 2011


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

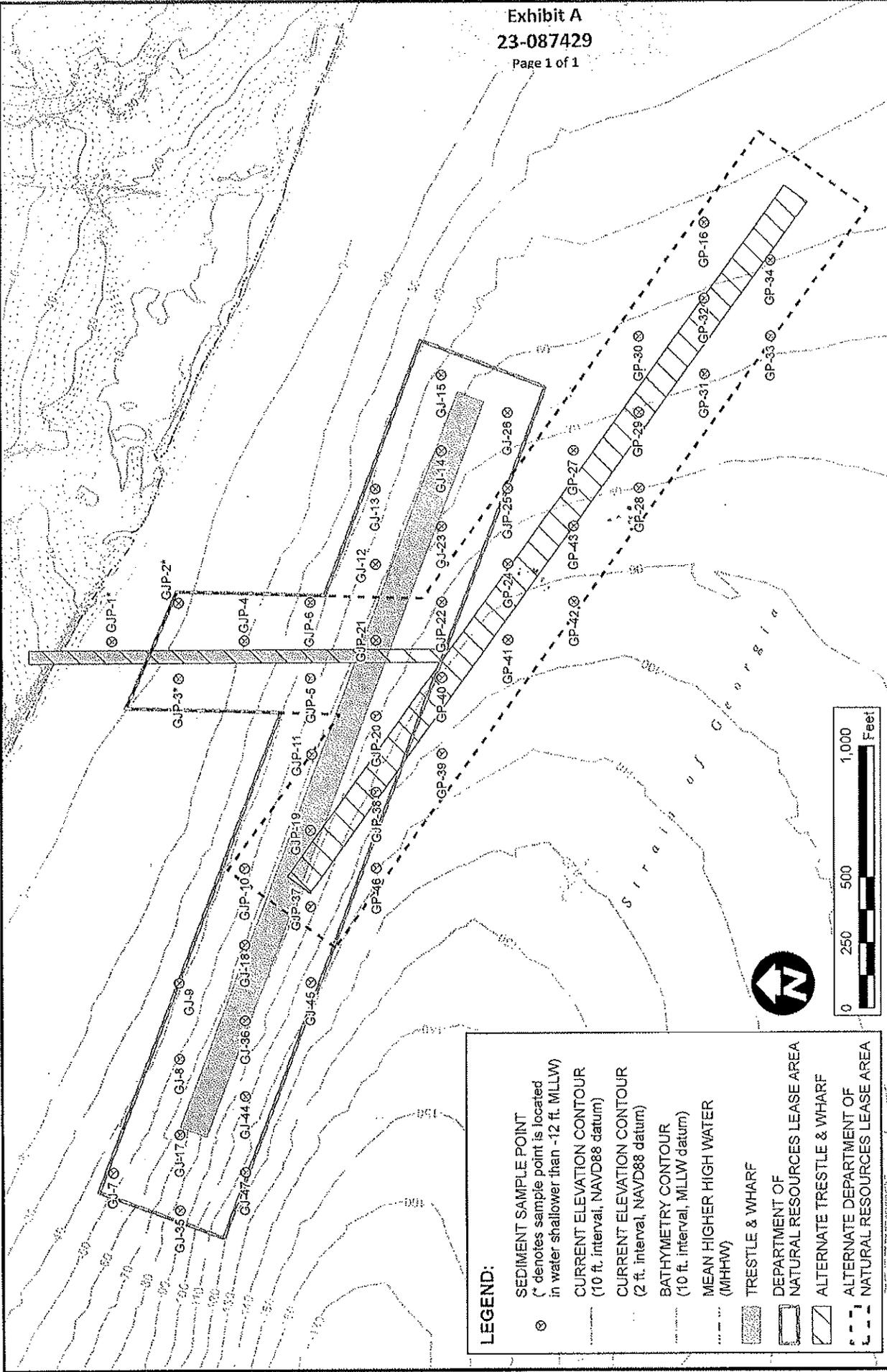
Dated: June 30, 2011


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
23-087429
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LEGEND:

- ⊙ SEDIMENT SAMPLE POINT
(* denotes sample point is located in water shallower than -12 ft. MLLW)
- CURRENT ELEVATION CONTOUR (10 ft. interval, NAVD88 datum)
- CURRENT ELEVATION CONTOUR (2 ft. interval, NAVD88 datum)
- BATHYMETRY CONTOUR (10 ft. interval, MLLW datum)
- MEAN HIGHER HIGH WATER (MHHW)
- [Hatched Box] TRESTLE & WHARF
- [Solid Line Box] DEPARTMENT OF NATURAL RESOURCES LEASE AREA
- [Hatched Box] ALTERNATE TRESTLE & WHARF
- [Dashed Line Box] ALTERNATE DEPARTMENT OF NATURAL RESOURCES LEASE AREA

PROPOSED: Perform sediment sampling in the footprint of the proposed Gateway Pacific Terminal wharf and trestle.

IN: Eastern Shore of Strait of Georgia
NEAR/A: Fernside
COUNTY: Whatcom STATE: WA
APPLICATION BY: Pacific International Terminals, Inc.
SHEET: 2 of 2
TITLE: Sediment Sampling Design
DATE: May 2011

APPLICANT REFERENCE:
LOCATION: Cherry Point, Whatcom County, Washington

NOTE: Not for construction, for agency review only. All facilities are proposed, no existing structures on site currently.
PROJECT AREA:
48° 51' 18.10" N
122° 42' 21.42" W

PURPOSE: To implement sediment investigation work plan.
DATUM: N/A

ADJACENT PROPERTY OWNERS: Pacific International Terminals Inc.,
Cherry Point Industries LLC, BP West Coast Products LLC

SOURCE: 143166-A400-50010-PP3.dwg, Ausenco Sandwell, 04/08/2011.
154199-A 100-42301.dwg (Rev. J), Ausenco Sandwell, 12/24/2010.
2010-04-14-svTP\PI\00006-DEGROSS.dwg, David Evans & Associates, 07/20/2010.

IMPLEMENTATION OF THE SEDIMENT INVESTIGATION WORK PLAN (SIWP), WHATCOM COUNTY, WASHINGTON

PACIFIC INTERNATIONAL TERMINALS, INC.

AUTHORIZATION NUMBER: 23-087429

MAY 27, 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 approximately one-and-a-half months of sampling and analysis within the marine study area located in the Strait of Georgia, Whatcom County, Washington. The study area for the sampling and analysis plan was determined based on the likely location of the proposed Gateway Pacific Terminal pier wharf and trestle.

Within the study area, seafloor sediment will be collected, followed by laboratory testing of sampled material. Collected data will provide baseline conditions of sediment quality as mandated by the Gateway Pacific Terminal Settlement Agreement (1999). These baseline conditions would then be compared to annual sediment sampling results in order to detect changes or trends in sediment quality.

Schedule

Sediment sampling is anticipated to begin within the open water work window, between July 1 and July 15. Open construction dates were determined by the Washington Department of Fish and Wildlife (WDFW) and the US Army Corps of Engineers (USACE). Sample collection is expected to take up to 1 week. Sampling will be completed by July 15, 2011. Bioassay tests are expected to take up to 5 weeks, and subsequent chemical analyses will take an additional 12 weeks. Annual monitoring will not begin until the Gateway Pacific Terminal is constructed.

Annual sampling during the period from July 1 to August 30 would likely occur in future years.

Operations

The sampling design specifies the collection of 47 samples within the study area, which is located in the Strait of Georgia. Forty-four of the sampling locations are in water depths greater than -12 feet MLLW, and three locations are in waters shallower than -12 feet MLLW. In the field, sample stations will be located with a Differential Global Positioning System (DGPS). Samples will be collected within 3 meters (m) of the proposed sampling locations. If samples cannot be collected after two attempts an alternative location may be selected. The actual sample locations will be recorded and logged.

A hand-core sediment sampler (20 cm diameter x 10 cm deep) will be used to collect the sediment samples at the shallowest water depth. Sediments at all other sampling location will be collected using 0.2 m² stainless-steel Van Veen sediment grab sampler deployed from a sampling vessel. Prior to sampling, the surface of the sediment will be photographed, visually inspected, and logged.

Sample containers, instruments, working surfaces, technician protective gear, and other items that may come into contact with sediment sample material will meet high standards of cleanliness. All sediment-handling equipment will be cleaned and decontaminated prior to arrival at the site. The hand-core samplers will be pre-cleaned prior to arrival at the site. The hand-core samplers will be rinsed clean of any visible sediment and decontaminated between uses. All equipment and instruments used to remove sediment from the sampler or to homogenize samples will be stainless steel and will be decontaminated before and in between each use.

The AMEC standard decontamination procedure for the hand-core samplers, Van Veen grab, and other sample handling equipment is modeled after Puget Sound Estuary Program (PSEP) protocols; however, the decontamination procedure will not use any acid or solvent rinses (the final rinse will use distilled water).

During the initial round of sampling, surface sediment (top 10 cm) from a minimum of two hand cores at Station GP-1, and a single Van Veen grab at other sample locations will be collected. Sediments for pore water extraction for the Microtox® bioassay will be placed directly from the sampler into the 16-oz glass jar to minimize disturbance and possible volatilization of potential contaminants. The remaining sediments will be homogenized and bottled. A portion of the bottled sediment will be tested during the initial round of chemical testing. The remaining sediment will be archived for possible biological effects testing.

At six of the sediment sampling stations, benthic infauna would be sampled. Five replicate samples will be collected at each station and processed according to standard Puget Sound protocols. Each replicate sample will be sieved through 1000 µm mesh, and organisms retained. Processed invertebrate samples would be preserved in the field with a 10% aqueous solution of borax-buffered formalin. Taxonomic identification, data compilation, and analyses of benthic infauna will be conducted.

To avoid potential adverse impacts to the Strait of Georgia, the following best management practices would be followed:

- Waste sediments would not be returned to the water column. Waste sediments would be placed in appropriate containers, labeled, and disposed of in an approved upland location (landfill) in accordance with appropriate regulations.
- All sediment-handling equipment will be cleaned and decontaminated prior to arrival at the site.
- The hand-core samplers will be pre-cleaned prior to arrival at the site.
- The hand-core samplers will be rinsed clean of any visible sediment and decontaminated between uses.
- All equipment and instruments used to remove sediment from the sampler or to homogenize samples will be stainless steel and will be decontaminated before and in between each use.

Maintenance

Maintenance is a necessary and ongoing activity of the sampling equipment. Regular preventive maintenance maintains machinery free of leaks and reduces the risk of breakdowns on the job. Maintenance activities include inspection, adjustment, and servicing.

Equipment will be inspected to ensure that it is in good working order prior to beginning operations. Inspections will be made of ancillary equipment such as pumps, hose, and sample handling equipment. Potential defects will be corrected prior to proceeding with operations

Once operations are initiated, the equipment will be inspected routinely and at a minimum on a daily basis. If a mechanical breakdown should occur at the project site, the circumstance will be evaluated and if the repair can be made safely, it will be made immediately. If a mechanical breakdown cannot be safely repaired at the site, the equipment will be returned to port prior to initiating the repair.