

**STATE OF NEW HAMPSHIRE
DIVISION OF PORTS AND HARBORS
ISSUE RESOLUTION PROPOSAL**

TO BEST SERVE THE CITIZENS OF THE STATE:

**IMPLEMENT FAIR, JUST AND EQUAL
RSA 541-A ADMINISTRATIVE RULES**

APPLYING TO PRIVATE BUSINESSES

**OPERATING ON STATE-OWNED
COMMERCIAL PIERS AND ASSOCIATED FACILITIES**

September 11, 2024

[October 10, 2024: minor corrections]

For information regarding RSA 541-A, go to: <https://pda-dph.com> or email: contact@pda-dph.com

SUMMARY STATEMENT

Background: Administrative rules have been created in all 50 states and by the federal government, and have been implemented as laws known as Administrative Procedure Acts [APAs] that govern procedures for state and federal administrative agencies to:

- (1) Require agencies to keep the public informed of their procedures and rules;
- (2) Provide for constitutional due process requirements regarding public participation in the rule making process via public hearings and public commenting;
- (3) Establish uniform standards for the conduct of formal rule making & adjudication;
- (4) Define the scope of judicial review by the courts.

In New Hampshire, "The Administrative Procedure Act", RSA 541-A, is a law that governs the process by which state agencies promulgate and adopt rules [RULES] that must be filed by state executive branch agencies before they become operative. Specifically, the Division of Ports and Harbors [DPH] is subject to the rule making provisions set forth in RSA 541-A:3 through RSA 541-A:15 [by RSA 12-G:42,X & RSA 541-A:21,(n)]. Accordingly, "*No agency rule, including a form, is valid or effective against any person or party, nor may it be enforced by the state for any purpose, until it has been filed as required in this chapter and has not expired.*" [RSA 541-A:22, I]

Problem Statement: There are no approved RSA 541-A Administrative Rules adopted by the Division of Ports and Harbors Advisory Council [DPHAC] or the Pease Development Authority [PDA] as required by law [RSA 12-G:44] governing about 80 DPH commercial entities operating as "Right of Entry" [ROE] private businesses on state-owned commercial piers and associated facilities. These businesses operate under ROE agreements set forth exclusively by the PDA without compliance with RSA 541-A. Accordingly, these agreements are unenforceable as set forth in law by RSA 541-A:22, potentially inviting civil litigation against the PDA and its board members by adversely affected persons.

In the twenty three year history of the PDA, its Board of Directors [BoD] has yet to create proper ROE RULES. In addition to such being unenforceable, existing ROE agreements are not standardized. Some businesses are treated unfairly while others are granted substantial tacit cost beneficial waivers. Renewal agreements have contained retroactive requirements that have unjustly imposed costs upon some businesses and not on others. There are no PDA policies, procedures, RULES or regulations that allow injured interested parties to collaborate with the BoD to resolve issues. Request letters to do so have gone unanswered. The BoD holds no public hearings before ROE agreements are approved.

To exacerbate the problem, the lack of such RULES was brought to the attention of the BoD in a meeting over a year ago on June 15, 2023 [BoD minutes, page 3]. However, the BoD has yet to require the production and approval of RULES governing existing DPH business operational entities as required by state law.

What Needs To Be Done To Solve The Problem: Create DPHAC RULES to lawfully manage and administer existing and future business operational entities operating on state-owned commercial piers and associated facilities under the jurisdiction of the DPH pursuant to RSA-541-A, Sections 3 through 15. This effort will result in legally adopting RULES to uniformly regulate these businesses and treat all DPH businesses in a fair, just and equal manner, absent of favoritism or bias. Such is a duty of every PDA BoD member to complete the task of adopting proper and lawful RULES without any further delay.

**PROPOSED DRAFT AND FRAMEWORK TO CREATE:
CHAPTER Pda 800 – MANAGEMENT OF STATE-OWNED COMMERCIAL PIERS
AND ASSOCIATED FACILITIES AND USAGE BY PRIVATE BUSINESSES**

Section Pda 801 - MISSION, PURPOSE, SCOPE AND MANAGEMENT:

Section Pda 801-01 – Mission: Pursuant to RSA 12-G:44, *“It is the job of the Division of Ports and Harbors Advisory Council to consult with and advise the division Director with respect to the policy, programs, and goals of the division, the operation of the port, the selection of harbor masters and assistant harbor masters, and the procurement of services of a port terminal operating firm.”*

Section Pda 801.02 – Purpose: Pda 800 will establish the specific process, provisioning details and financial policies for administering a system for permitting space to be set aside and used by businesses operating under a *“Business Use Permit”* on state-owned commercial piers and associated facilities under the jurisdiction of the Division of Ports and Harbors [DPH] and its Director; and to require the DPH to keep the public informed of their procedures and rules and to demonstrate that DPH commercial piers and associated facilities are properly managed and funded.

Section Pda 801.03 – Scope: Pda 800 shall apply to all DPH management personnel and all persons who seeks or uses state owned property under the jurisdiction of the DPH for businesses operating under Business Use Permit on state-owned commercial piers and associated facilities.

Section Pda 801.04 – Management: The Director of Pease Development Authority [PDA], Division of Ports and Harbors [DPH] is subject to the direction and control of the PDA Board of Directors and the PDA executive director. Regarding Pda 800, the DPH Director is responsible for managing the day-to-day business and affairs of the DPH pursuant to RSA 12-G:43 and is designated by this rule as the authority governing Pda 800. However, for just cause, decisions made by the Director are subject to review by the PDA Board of Directors, the PDA executive director and the courts.

Pda 802 – DEFINITIONS

Section Pda 802.01 – *“Business”* means any enterprise, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust or other form of organization, that is organized for gain or profit, carrying on any business activity within the state, except such enterprises expressly made exempt from income taxation under the United States Internal Revenue Code as defined in RSA 77-A:1, XX.

Section Pda 802.02 – *“Port Vendor”* means a vendor that directly supplies services or materials to port operations such as but not limited to fuels, materials, containers, waste disposal, electricity, water, plowing, repairs, etc.. [Note: due to the specialization and technical nature of these businesses, standardized rules, including specialized rules and regulations, need to be established and added to Pda 100-800 as appropriate.]

Section Pda 802.03 - *“Business Use”* means a business organization, other than a Port

Vendor, engaged for profit selling products or services directly to the public which businesses are largely, directly or indirectly, related to the fishing industry, natural resources, recreation and/or tourism.

Section Pda 802.04 - "*Business Use Building*" means a building designed primarily to support retail sales and/or services, or for storage, and constructed in compliance with local, state and federal building codes, regulations, rules, bylaws and zoning ordinances.

Section Pda 802.05 - "*Business Use Location*" means a plot of state owned land used for the purpose of designating the location of a Business Use Building and including outdoor space for the storage of equipment necessary for the operation of the Private Business.

Section Pda 802.06 - The "*Division Office*" official title and location: Pease Development Authority, Division of Ports and Harbors, 555 Market Street, Portsmouth, NH 03801

Section Pda 802.07 - "*Business Use Location Map*" means a graphical map that the Director shall maintain at the Division Office designating the land to be used for the purpose of designating Business Use Building sites [*LOCATION MAP ID*].

Section Pda 802.08 - "*Business Use Permit*" [PERMIT] means a grant to use a plot of state owned land or building to be used for the purpose of locating space that will support a Business Use subject to the approval of the DPH.

Section Pda 802.09 - "*Parking Lot Map*" means a graphical map that the division shall maintain at the division office designating the land to be used for the purpose of parking for Business Use Buildings which also shall designate such as handicapped, free, limited long term, employee and agent parking.

Section Pda 802.10 - "*Retail Sales Permit*" is a secondary Permit required for a Business Use to sell retail products such as, but not limited to, food, clothing, hardware, software, graphical images, footwear, equipment, raw seafood, tools, bait, etc. to the general public. Such Permit is not required for permittees that are not engaged in retail sales or holds a pier use permit and are solely in the business of operating a commercial fishing vessel.

Section Pda 802.11 - "*Common Utility Services*" is the provisioning of services by the DPH to supply an equal measure to all Business Use Buildings regarding potable water, waste water disposal services, gas and electricity services at prevailing prices in the community.

Section Pda 802.12 - "*Open to the General Public*" means that any person is reasonably allowed to enter and do business at a Business Use Building, with or without the payment of a fee or other consideration, subject to applicable health and safety restrictions.

Section Pda 802.13 - "*Business Use Wait List*" is a list persons who have filed for a PERMIT, but there are no available locations for additional permitting as set forth on the Business Use Location Map [*LOCATION MAP ID*].

Pda 803 – FORMS, FEES, PERMITS, TERMS AND CONDITIONS

Section Pda 803.01 – A “Business Use” PERMIT form may be obtained at the Division Office. The application fee is \$25.00. The “Annual Fee” is \$2,000.00.

Section Pda 803.02 - A “*Business Use Transfer*” form may be obtained at the Division Office. The application fee is \$25.00. The late fee is \$25.00.

Section Pda 803.03 - A “*Business Use Wait List*” form may be obtained at the Division Office. The application fee is \$25.00.

Section Pda 803.04 - A “*Petition for Reconsideration*” form may be obtained at the Division Office. The application fee is \$25.00. The late fee is \$25.00.

Section Pda 803.05 - A “*Retail Sales Permit*” may be added to a PERMIT. The Use Fee is \$1,000.00 per month for each month of operation from April 1st to October 31st. This fee is due the first day of each month. The fee is waived for months not operating.

Section Pda 803.06 – The Standard Terms and Conditions of a PERMIT shall include:

- (1) Right to maintain a Business Use Building on the Business Use Location Map [*Pda 802.07*].
- (2) A PERMIT form [*Pda 803.01*] must be filed by December 31 for permits for the subsequent year, except for unexpired multi-year permits [*Pda 804.03*].
- (3) Customer parking spaces are set forth on the Parking Lot Map [*Pda 802.09*].
- (4) Employee parking spaces are set forth on the Parking Lot Map [*Pda 802.09*].
- (5) Animals must be controlled [*Pda 603.06*].
- (6) Permittee may use the marine pier in connection with its operation if the permittee obtains a pier use permit [*Pda 101.27*].
- (7) Permittee must obtain all necessary permits and licenses that are required to engage in its operations.
- (8) The scheduling of departures and arrivals relative to the PERMIT shall not interfere with the scheduled use of common areas or adjoining areas by other entities;
- (9) Permittee may utilize the area in front of its designated Business Use Building only for loading and unloading. Any loading and unloading shall not unreasonably interfere with the scheduled use of common areas or adjoining areas by other entities.
- (10) The Annual Rental Fee for the PERMIT shall be paid in full by bank check on or before April 1 each year to the Division Office. Payments may not be made in cash.
- (11) The size, location and construction of signs posted on the outside of any Business Use Building requires the approval of the Director.
- (12) Permittee is required to deliver high quality merchandise and services to the public. Written complaints relating to permittee policies, prices, quality, cleanliness and services must be resolved promptly and settled to the satisfaction of the Director.
- (13) All utility services needed to serve any Business Use Building shall be at the sole cost of the permittee.
- (14) Permittee shall be responsible for good housekeeping and high sanitation standards regarding regular and routine cleaning of all areas of its Business Use Building, behind its Business Use Building and equipment, including walls, floors, windows, fixtures, draperies, blinds, and garbage containers and where merchandise is stored, prepared or sold. Waste material shall be promptly and regularly picked up and

rubbish generated by its operations or customers and depositing such at a location designated by the Director.

- (15) Permittee agrees to defend and indemnify the State of New Hampshire and DPH against and from any and all claims, judgments, damages, penalties, fines assessments, costs and expenses, liabilities and losses (*including without limitation, sums paid in settlement of claims, attorney's fees, consultant's fees and experts fees*) resulting or arising during the term of this PERMIT:
 - (A) From any condition of its Business Use Building including its structure or improvements thereon for which permittee has taken possession of hereunder;
 - (B) From any breach or default of any obligation on the part of permittee to be performed pursuant to the terms of this PERMIT or from any act or omission of permittee or any of its agents, contractors, servants, employees, licensees or invitees; or
 - (C) From any accident, injury, death, loss or damage whatsoever caused, to any person or property occurring during the term of this PERMIT, on or about the Marine Facility areas (*including but not limited to piers, docks, gangways, building, and parking areas*) arising out of or incidental to the use, management or control of the area(s) and activities which are the subject of this PERMIT.
- (16) On or before the effective date of this PERMIT, permittee and any agent, contractor, or vendor of permittee shall provide the Director with proof of sufficient insurance coverage [*Pda 803.07*] to protect the interests of DPH and the State of NH. Replacement costs of permittee's privately owned Business Use Building and contents may not be protected under these terms. Permittee should consult with its insurance provider to ensure its individual insurance needs are met.
- (17) Notwithstanding the foregoing, no provision of this PERMIT shall be deemed to constitute or effect a waiver of the sovereign immunity of the State of New Hampshire and no provision of this PERMIT shall be deemed to constitute or effect a waiver of the sovereign immunity of DPH as a body politic and corporate of the State of New Hampshire. The sovereign immunity of the State of New Hampshire and DPH is reserved to the fullest extent allowed under law subject however to contractual claims arising under this PERMIT to the extent such are permitted by New Hampshire NI-I RSA Ch.492:8 as the same may be amended.
- (18) This PERMIT may be self terminated [*Pda 807.01(6)*].
- (19) Regarding performance, this PERMIT may be terminated [*Pda 807.01(4)*];
- (20) Regarding insurance, this PERMIT may be terminated [*Pda 807.01(5)*];
- (21) In the performance of this PERMIT, permittee is in all respects an independent contractor and is neither an agent nor employee of the State of New Hampshire or DPH and that the State of New Hampshire and DPH shall, at no time, be legally responsible for any negligence or willful acts on the part of permittee or any of its officers, employees, agents, or members resulting in either personal or property damage to any individual, firm or corporation. Neither permittee nor any of its officers, employees, agents, or members shall have the authority to bind the State of New Hampshire or DPH nor are they entitled to any of the benefits, Worker's Compensation or emoluments provided ,by the State of New Hampshire or DPH to its employees. permittee agrees to hold the State of New Hampshire and DPH harmless against liability for loss or damage to its equipment or supplies or equipment rented or leased by the permittee from others from any cause whatsoever, while they are located on state property either during the operating period or while in storage.

- (22) In connection with the performance of this contract, permittee agrees to comply with all statutes, laws, rules, regulations and orders of federal, state, county or municipal authorities, including those of DPH which shall impose any obligation or duty on permittee and to procure and maintain all necessary licenses and permits required in connection with the operations described herein.
- (23) Permittee shall be familiar with and comply with all applicable DPH RSA 541-A Administrative Rules.
- (24) Camping or sleeping on the premises is prohibited [*Pda 603.11(a)*].
- (25) Consumption of alcohol on the premises is prohibited [*Pda 603.11(b)*].
- (26) The sale of products is not permitted under this PERMIT. A separate Retail Sales Permit [*Pda 803.05*] is required for the sale of products from or on the premises.
- (27) Permittee is responsible for providing all necessary and required safety equipment and training to its employees and customers as may be required and appropriate to the uses allowed under this PERMIT.
- (28) Meetings may be held as necessary at a place and time to be agreed upon mutually by DPH and permittee for the purpose of discussing issues and/or changes relating to schedules, rules, policies, procedures and other reasonable business operational matters that may affect the permittee.
 - (a) The DPH shall provide notice of said meetings with an agenda containing the issues that will be discussed at least two business days in advance. The DPH shall produce and distribute meeting minutes within five days after the meeting.
 - (b) The DPH will be represented at these meetings by the Director or a representative and other DPH field operations personnel to achieve the objective of the meeting.
 - (c) Permittee shall be represented at least by one officer or agent of the company.
- (29) In the event the premises, any Business Use Building, or any part thereof shall be destroyed by fire or unavoidable casualty so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, that portion of permittee operation shall be suspended or abated until and if said Business Use Building, or any part thereof shall have been placed in proper condition for use by permittee. The DPH may terminate this contract in the event permittee fails to repair or replace any privately owned Business Use Building within ninety (90) days of a fire or casualty. In the event of such termination, permittee shall remain responsible for the costs of any repair or removal undertaken by DPH.
- (30) Any privately owned Business Use Building and any equipment thereof shall remain the property of permittee and upon termination of this PERMIT by lapse of time or otherwise, permittee shall promptly remove same from the premises. Upon the termination of a PERMIT, permittee may offer for sale to the DPH, or a succeeding permittee authorized by the Director, at fair market value, any and all Business Use Buildings and equipment owned by permittee;
- (31) Permittee may only transfer its PERMIT or privately owned Business Use Building pursuant to *Pda 805*;
- (32) Permittee shall allow DPH, or such person as may be designated by DPH, reasonable access to the premises and any Business Use Building at reasonable hours for the purpose of examining and inspecting said premises and Business Use Building for reasons that directly relate to this PERMIT. Except in the event of an emergency, DPH agrees that such access will not unduly affect the operations of permittee business.
- (33) The use, maintenance or storage of any boat or marine vessel located on DPH property is not permitted by this PERMIT.

- (34) To the extent applicable, permittee agrees to hold the State of New Hampshire and DPH harmless with respect to taxes levied against the premises subject to this PERMIT as a consequence of the application of RSA 72:23 I. permittee agrees to pay, in addition to other payments, all properly assessed real and personal property taxes against the premises subject to this PERMIT in accordance with the provisions of RSA 72:23 I. In the event permittee shares a larger parcel of land with other PERMIT holders, it shall be obligated to pay only its pro rata share of any such taxes. Failure of permittee to pay its duly assessed personal and real estate taxes when due, shall be cause to terminate this PERMIT by DPH. permittee shall, in addition, reimburse DPH for any taxes paid by it pursuant to RSA 72:23 I as a result of permittee failure to pay said taxes.
- (35) This PERMIT has been entered into in the State of New Hampshire and shall be interpreted under New Hampshire law.
- (36) This PERMIT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section Pda 803.07 – Minimum Requirements Of Certificates Of Insurance For *Business Use Permittees* Operating at the Division of Ports and Harbors [*DPH*]. All permittees are required to provide proof of insurance to the DPH Director before the commencement of business on DPH property and to maintain such insurance while conducting such business. Questions should be directed to the Pease Development Authority Legal Department at (603) 433-6348. The following are the minimum requirements for insurance coverage:

- (1) Protection and Indemnity: shall provide for a liability limit on account of each accident resulting in bodily injury, death, or property damage to a limit of not less than \$1,000,000.00 per occurrence.
- (2) Dockside liability endorsement [if appropriate]: Covering piers, gangways, docks and related areas.
- (3) Automobile Liability: Automobile liability coverage to a limit of not less than \$1,000,000.00 per occurrence.
- (4) Workers Compensation: Coverage equal to minimum statutory levels as required by New Hampshire State law.
- (5) Additional Insureds: Pease Development Authority Division of Ports and Harbors and the State of New Hampshire must be named as additional insureds under all liability coverages.
- (6) Certificate Holder: The Division Office's official title [*Pda 802.06*].
- (7) Notice of Cancellation: A 30 day notice of cancellation (with the exception of a 10 day notice for non-payment of premium) must be provided.
- (8) Waiver of Subrogation: With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage.
- (9) Primary Insurance: A provision that any liability coverage required to be carried shall be primary and noncontributing with respect to any insurance carried by the PDA.
- (10) Renewed Certificates of Insurance shall be forwarded to additional insured prior to previous Certificates of Insurance expiry.

Pda 804 - RETAIL ENTITY APPLICATION, APPROVAL AND RENEWAL PROCESS

Section Pda 804.01 - The Director or designee shall grant a PERMIT [*Pda 803.01*] pursuant to the Standard Terms and Conditions of a PERMIT [*Pda 803.06*] on a space available basis as set forth on the Director's Business Use Location Map [*Pda 802.07*] after due consideration to the applicant's information set forth on the division's PERMIT form [*Pda 803.01*], including:

- (1) Identify the location on the Business Use Location Map [*LOCATION MAP ID*]; and
- (2) Completing in full, a PERMIT form; and
- (3) Filing the Form with the Director for approval; and
- (4) Paying the applicable fee(s) when due [*Pda 803.06*]; and
- (5) Provided materially true and accurate information on the Form; and
- (6) Signing the Form; and
- (7) Providing sufficient evidence that the proposed privately owned Business Use Building [*Pda 802.04*] is to be, or has been constructed in compliance with local, state and federal building codes, regulations, rules, bylaws and zoning ordinances.

Section Pda 804.02 - A PERMIT shall be valid for a one-year period from January 1st to December 31st and allow active seasonal operations only from April 1st to October 31st. Annual PERMITS issued shall expire on December 31st.

Section Pda 804.03 - The Director may grant multi-year PERMIT options for a particular range of years in a particular year to best manage the permitting process. However, such options shall be made available to all permittees in this regard to be fair and just.

Section Pda 804.04 - A PERMIT holder shall provide to the Director, at least 14 days before making a substantial change to its Business Use Building with written notice to the Director. The Director shall maintain the updated information and notify the PDA executive director in writing, within 14 days thereafter.

Pda 805 - TRANSFER OF RETAIL ENTITY TO ANOTHER PERSON

Section Pda 805.01 - A PERMIT shall not be transferred to any other person without approval of the Director. The Director shall only consider written transfer requests made by the owner of record and mailed or hand delivered to the Division Office. A Business Use Transfer form is available at the Division Office to facilitate transfers.

Section Pda 805.02 - The Director shall consider persons on the Wait List, if any, as having a priority in a transfer decision. However, due consideration must also be given to the ability of Wait List persons that have the financial resources and willingness to reimburse the transferring Business Use owner the fair market value of the existing privately owned Business Use Building and equipment.

Section Pda 805.03 - The Director or designee shall grant a Business Use Transfer [*Pda 803.02*] pursuant to the Standard Terms and Conditions of a PERMIT [*Pda 803.06*] on a space available basis as set forth on the Director's Business Use Location Map [*Pda 802.07*] after due consideration to the applicant's information set forth on the division's Business Use Transfer form [*Pda 803.02*], including:

- (1) Identify the location on the Business Use Location Map [*LOCATION MAP ID*]; and

- (2) Completing in full, a Business Use Transfer form; and
- (3) Filing the Form with the Director for approval; and
- (4) Paying the applicable fee(s) when due [*Pda 803*]; and
- (5) Provided materially true and accurate information on the Form; and
- (6) Signing the Form; and
- (7) Providing sufficient evidence that the proposed privately owned Business Use Building [*Pda 802.04*] is to be, or has been constructed in compliance with local, state and federal building codes, regulations, rules, bylaws and zoning ordinances; and
- (8) The approved Business Use Transfer will be administered for the current year as if it were filed as an original PERMIT [*Pda 803.01*].

Section Pda 805.04 - Business Use Transfer fees made mid season shall be administered on a pro rata basis as the Director may determine to be being fair and just.

Pda 806 - WAITING LISTS

Section Pda 806.01 - When the Director determines that all potential retail space is at capacity as set forth on the Business Use Location Map, the division shall establish and maintain a Business Use Wait List.

Section Pda 806.02 – The Director shall maintain a list of persons that have filed an annual Business Use Wait List form [*Pda 803.03*]. The list shall be kept in chronological order relative to the date that the Business Use Wait List form is filed with the Director at the Division Office.

Section Pda 806.03 - A person seeking to be placed on a Business Use Wait List shall obtain a Business Use Wait List form from the Division Office and sending said form, including a self-addressed, stamped envelope to the Division Office; and the applicant shall provide the information required on the form; and the applicant shall attach to the application the Business Use Wait List fee [*Pda 803.03*].

Section Pda 806.04 – If an available space is made available on the Business Use Location Map and there are persons who have filed a Business Use Wait List Form with the Director, the first name on the list shall be noticed in writing that there is space available on the Business Use Location Map [*LOCATION MAP ID*]. The person notified will have 14 days to file a PERMIT form. The Director, Failing to receive a PERMIT form from the notified person within 14 days, shall notify the next person on the Business Use Wait List. The process repeats until the Business Use Wait List is exhausted or the Business Use Location Map reaches capacity.

Section Pda 806.05 – The annual Business Use Wait List expires on December 31. Current wait list persons may file a renewal prior to the current year's expiry date for the following year, and paying the required fee, to maintain their priority on the Wait List.

Pda 807 - TERMINATION OF PERMITS

Section Pda 807.01 – A PERMIT may be terminated because:

- (1) The applicant has provided materially false information on a Business Use form or to a representative of the DPH, or has provided materially false or invalid information in any of the documentation required by Pda 800; or
- (2) Permittee has failed to timely pay any fees or other costs due or has failed to comply with Pda 800 rules adopted thereunder and such fees or other costs remain due and payable at the time the application is filed; or
- (3) Permittee has failed to obey any lawful order of the Director, the chief harbor master, the deputy chief harbor master, a harbor master, or an assistant harbor master in full compliance with such lawful order pursuant to RSA 12-G_52; or
- (4) Permittee has failed to perform, keep or observe the provisions of a PERMIT and the failure of permittee to correct the default or breach within the time specified by DPH. In the event of such termination, permittee shall remove any privately owned Business Use Building and all its possessions from the premises prior to the expiration of the thirty (30) days' notice; or
- (5) Permittee has failed to provide proof of insurance coverage [*Pda 803.07*], or engages in any activity which is deemed by DPH in its sole discretion to substantive and materially compromise public safety or health. In the event of such termination, permittee shall remove any privately owned Business Use Building and all its possessions from the premises immediately;
- (6) Permittee has self terminate a PERMIT by giving the Director thirty (30) days advance written notice and the permittee shall remove any privately owned Business Use Building and all its possessions from the premises prior to the expiration of the thirty (30) days notice. As an alternative, Permittee may request a Transfer Of Business Use To Another Person pursuant to Pda 805.

Section Pda 807.02 - In the case that a PERMIT is terminated, the provisions of the entire paragraph number (15) of the PERMIT [*Pda 803.06*] shall survive termination.

Pda 808 - RECONSIDERATION AND APPEAL PROCESS

Section Pda 808.01- Reconsideration by Director and Appeal Process.

- (a) A Petition for Reconsideration [*Pda 803.04*] of a decision made by the Director shall be filed with the Director within 10 business days from receipt of notice of a Termination of PERMIT or a contested decision made by the Director; and
- (b) The Director shall:
 - (1) Reconsider a such decision within 10 business days of receipt of the Petition; and
 - (2) Notify the petitioner under (c) below within 10 business days with the results of such Petition reconsideration decision.
- (c) When reconsidering a decision, the Director shall consider all information on file relating to the Petition and any new or additional information relevant to the Petition that was not available when the original decision was rendered.
- (d) The Director shall reverse a decision, after reconsideration, if the Director finds:
 - (1) One or more of the following:
 - a. It is more likely than not that the decision was based on an error of law or fact;
 - b. That there was a lack of facts that could reasonably sustain the decision; or
 - c. In the case of denial of a late filing, that upon issuance of notice:

1. The petitioner was temporarily incapacitated;
2. The petitioner was on active military service;
3. The late filing was caused by the failure of any state or governmental agency to timely provide the petitioner with the notice; or
4. A death in the immediate family occurred. For the purposes of this paragraph, "immediate family" means grandparents, parents, siblings, spouse, children, or grandchildren; and

(2) All of the following:

- a. The Petition was timely filed in accordance with (a) above;
- b. The Petition filed by the petitioner meets all of the following requirements:
 1. Specify the date of the challenged decision;
 2. Specify every reason that the action taken by the Director or authority was unlawful or unreasonable, including any error of law or error of fact;
 3. Include as an attachment a copy of the matter that was denied or failed to receive approval;
 4. Include any new or additional information relevant to the matter that was not available at the time the Petition was filed;
 5. In the case of denial because of a late filing, state the reason for the late filing;
 6. The Petition shall bear the petitioners signature including the following certification: *"I certify under penalty of law that I have personally examined, and am familiar with, the information submitted in the Petition for Reconsideration and all of its attachments. I certify that the statements and information submitted therewith are to the best of my knowledge and belief true, accurate and complete."*
- c. The petitioner:
 1. Meets all of the requirements set forth in Pda 800;
 2. Has provided written documentation for any reason claimed under (1)c. above, including, but not limited to In the case of temporary incapacitation:
 - i. A signed letter from a doctor, nurse, or other medical provider or caregiver attesting to the petitioner's incapacitation;
 - ii. A copy of a bill or invoice from an institution where the petitioner received medical or rehabilitative treatment or care; or
 - iii. A copy of a statement from an insurance company showing that costs for medical or rehabilitative treatment or care were submitted to the company for services for the petitioner;
 - iv. In the case of military service, a signed letter from the petitioner's commanding officer or supervisor attesting to the petitioner's military service;
 - v. In the case of the failure of any state or federal agency to provide the petitioner with documentation needed for an application under Pda 500, a copy of correspondence between the petitioner and a state or governmental agency, showing that the petitioner timely sought documentation needed for an application under Pda 500, but was not provided with the documentation in a timely manner; or
 - vi. In the case of a death in the immediate family, to identify the name of the deceased, the relationship to the petitioner, and the date of death; and
 - vii. Has paid any applicable late fee, in the case of Petition granted under (1)c. Above.

(e) The Director shall deny the Petition if, after reconsideration, the Director finds that:

- (1) It is more likely than not that the decision was not based on any error of law;
- (2) There were sufficient material facts reasonably sustaining the decision;
- (3) In the case of a late filing, the petitioner failed to meet the requirements under (d)(1)c. Above;
- (4) The Petition was not timely filed in accordance with (a) above;
- (5) The Petition does not meet all of the requirements under (d)(1)c;
- (6) The petitioner:
 - a. Does not meet all of the requirements set forth in Pda 800;
 - b. Has not provided written documentation for any reason claimed under (d)(1)c above; or
 - c. Has not paid the any applicable late fee (d)(1)c. above.
- (f) If after reconsideration, the Director grants the Petition, the matter is to be considered settled in all respects and not subject to further review.
- (g) If after reconsideration, the Director denies the Petition, Petitioner may appeal to the:
 - (1) PDA Board of Directors, which board shall take up the matter within thirty days; or
 - (2) New Hampshire Superior Court.

Pda 809 – FINIANCIAL ACCOUNTABILITY

Section Pda 809.01 – In order to demonstrate to the general public that DPH Commercial Piers located in Portsmouth, Hampton Harbor and Rye Harbor are properly managed and funded, the Director shall prepare detailed monthly and annual financial statements for each Commercial Pier and post such within five days to the DPH Internet web site:

- 1) All Income by type of fee pursuant to Pda 512, Pda 610 and Pda 803, and any other type of income such as, but not limited to, grants, donations, refunds, etc.; and
- 2) All Expenditures detailed by major undertakings broken down by components and general expenditures broken down by individual type of expenditure such as, but not limited to, hourly labor, professional, contracted services, supplies, materials, debt service, etc.; and
- 3) A computation of profit or loss for the month and year to date.

Pda 810 – COMPETITIVE BIDDING POLICY

Section Pda 810.01 – To ensure transparency, cost effectiveness, standardization and compliance, a competitive bidding policy requires all suppliers/vendors to submit formal bids for specific goods or services. The primary decision basis must be price with due consideration of other measures such as quality, capability, service level and warranties.

Section Pda 810.02 – In order to demonstrate to the public that all DPH individual undertakings are just and prudent, the Director shall, after careful comparisons of pricing and other measures by various vendors, decide the best course of action. Purchases of supplies, materials, equipment and services in the amount of \$10,000 or more shall be based on at least three sealed competitive bids. Exceptions to this policy should be rare. Such cases shall require persuasive and extensive documentation detailing special time, manner, use and emergency circumstance facts to justify deviating from this policy.

Pda 811 – TRANSITIONAL CONSIDERATIONS AND EXPIRY DATE

Section Pda 811.01 – Many private businesses have been active at DPH facilities dating back to the 1960s. Such has positively contributed to the history, charm and character of these historic harbors. Accordingly, in transitioning from Right of Entry agreements [ROEs] to Pda 800 PERMITS, due consideration must be given to the currently active DPH ROE businesses. These businesses are privately funded, including the installation of all of the services that support the business such as: potable water, waste water disposal services, gas and electricity services. Such clearly represents a considerable investment, and much of it will be lost if current agreements are denied renewal without sufficient cause. According, fair and just consideration must be given to converting current ROE agreements to Pda 800 PERMITS within the first year after final approval as set forth pursuant to RSA 541-A:21 (n) and RSA 541-A, Sections 3 to 15.

Section Pda 811.02 – The Rye Harbor Marine Facility needs to be improved to help resolve known safety, health and traffic management issues at the harbor and better protect the harbor from tidal flooding events. The following is a priority list of projects to be considered by the DPH for immediate implementation:

- 1) Improve the seawall to better protect the harbor from tidal flooding;
- 2) Substantially raise the level of the parking lot and pave it;
- 3) Implement Plan#1 of the "*Appledore Marine Engineering LLC Rye Harbor Parking Study Report*";
- 4) Put electrical and water services underground to better protect harbor structures;
- 5) Automate the receipt of parking fees;
- 6) Upgrade state owned buildings to protect them better from tidal flooding.

Section Pda 811.03 – Section Pda 811, "*Transitional Considerations*" expires on December 31, 2026 unless otherwise renewed pursuant to RSA 541-A prior to that date.

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Business Use Permit [*Pda 803.01*]

Pease Development Authority, Division of Ports and Harbors ("PDA-DPH") with an address of 555 Market St., Portsmouth, NH 03801 under authority set forth in NH RSA 12-G, grants a Business Use Permit to the party identified below to use property of the State of New Hampshire pursuant to Pda 804 for the following purposes and for no other uses unless expressly authorized:

APPLICANT: _____
PREMISES: _____
LOCATION MAP ID: _____
PURPOSE OF PERMIT: _____

This Business Use Permit is subject to:

- (1) Pda 803.06 Standard Terms and Conditions; and
- (2) Pda 803.01 Permit Fees; and
- (3) Pda 610.02 Parking Fees; and
- (4) Pda 804.02 Period of Use and multi-year Options [804.03]; and
- (5) Pda 604 through Pda 609 parking rules.

Does this Business Use Permit include a Retail Sales Permit [*Pda 803.05*]: (yes) (no)

Total fees due over the life of the above granted permit(s): \$ _____

Date: _____

Witness Signature

PDA Executive Director

Witness Printed Name:

DPH Director

Date: _____

Witness Signature

Applicant Authorizing Signature

Witness Printed Name:

Printed Name and Title

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Business Use Transfer [*Pda 803.02*]

Pease Development Authority, Division of Ports and Harbors ("PDA-DPH") with an address of 555 Market St., Portsmouth, NH 03801 under authority set forth in NH RSA 12-G, has granted a Business Use Permit to the party identified below to use property of the State of New Hampshire pursuant to Pda 805 and is now requesting that the current Permit be transferred to a new permittee as set forth below:

CURRENT PERMITTEE: _____
 PREMISES: _____
 LOCATION MAP ID: _____
 NEW PERMITTEE: _____
 NEW PERMITTEE ADDRESS: _____

The foregoing Business Use Permit is subject to:

- (1) Pda 803.06 Standard Terms and Conditions; and
- (2) Pda 803.01 Permit Fees; and
- (3) Pda 610.02 Parking Fees; and
- (4) Pda 804.02 Period of Use and multi-year Options [*804.03*]; and
- (5) Pda 604 through Pda 609 parking rules.

Does this Business Use Permit include a Retail Sales Permit [*Pda 803.05*]: (yes) (no)

Total fees due over the life of the above if granted transferred permit(s): \$_____

Date: _____

 Witness Signature

 PDA Executive Director

 Witness Printed Name:

 DPH Director

Date: _____

 Witness Signature

 Applicant Authorizing Signature

 Witness Printed Name:

 Printed Name and Title

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Business Use Wait List [*Pda 803.03*]

Pease Development Authority, Division of Ports and Harbors [*PDA-DPH*] with an address of 555 Market St., Portsmouth, NH 03801 under authority set forth in NH RSA 12-G, maintains a Wait List for a party seeking a Business Use Permit to use property of the State of New Hampshire pursuant to Pda 800 when the current Business Use Location Map is at capacity. The party listed below requests that their name be placed on the Business Use Wait List pursuant to Pda 806 for the current year:

APPLICANT: _____
 PREMISES: _____
 LOCATION MAP ID: _____
 PURPOSE OF PERMIT: _____
 PERIOD OF USE: _____

A Business Use Permit is subject to:

- (1) Pda 803.06 Standard Terms and Conditions; and
- (2) Pda 803.01 Permit Fees; and
- (3) Pda 610.02 Parking Fees; and
- (4) Pda 804.02 Period of Use and multi-year Options [*804.03*]; and
- (5) Pda 604 through Pda 609 parking rules.

Will a Retail Sales Permit [*Pda 803.05*] also be requested: (yes) (no)

Date: _____

Witness Signature

PDA Executive Director

Witness Printed Name:

DPH Director

RETAIL ENTITY WAIT LIST APPLICANT

Date: _____

Witness Signature

Authorizing Signature

Witness Printed Name:

Printed Name and Title

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Petition for Reconsideration [*Pda 803.04*]

Pease Development Authority, Division of Ports and Harbors [*PDA-DPH*] has an address of 555 Market St., Portsmouth, NH 03801 under authority set forth in NH RSA 12-G. The DPH Director has made a decision regarding the matter set forth below. The party identified below seeks reconsideration of said decision and prays that relief be granted pursuant to Pda 808 as follows:

APPLICANT: _____
 ADDRESS: _____
 DECISION MADE: _____

RELEIF SOUGHT: _____

Please attached all required documentation pursuant to Pda 808.

PETITION FOR RECONSIDERATION

Date: _____

 Witness Signature

 Authorizing Signature

 Witness Printed Name:

 Printed Name and Title