



555 Market Street, Suite 1, Portsmouth, NH 03801

PORTS AND HARBORS

RIGHT OF ENTRY

Pease Development Authority-Division of Ports and Harbors ("PDA-DPH") with an address of 555 Market Street, Portsmouth, NH 03801 under authority set forth in NH RSA 12-G, grants a Right of Entry ("ROE") to DiTucci Petroleum Carriers Inc. dba Lawrence Tank of 3 Clark Rd. East Kingston, NH 03827 to use property of the Hampton Harbor Marine Facility ("Premises") pursuant to the terms of this Right of Entry and for the following purposes and for no other uses unless expressly authorized:

PREMISES: Hampton Harbor Marine Facility


PURPOSE OF ROE: Use of Landing Facilities to fill tankers with salt water

PERIOD OF USE: Period 1: July 1, 2020 through December 31, 2021.
Period 2: January 1, 2022 through December 31, 2022
DiTucci may exercise its right to extend for two (2) one (1) year options subject to the approval of the Executive Director.

FEE: Period 1: \$1500 fee for the first term, July 1, 2020 through December 31, 2021
Period 2 and option years to be reviewed and negotiated 60 days in advance prior to the start of each subsequent year

This ROE is given to DiTucci Petroleum Carriers Inc. dba Lawrence Tank ("DiTucci") subject to the following conditions:

1. The term of the ROE shall be from July 1, 2020 through December 31, 2022. DiTucci is granted 2 (two) 1 (one) year options to extend the ROE which are subject to the approval of the PDA Executive Director. DiTucci shall notify PDA-DPH in writing by November 1, before the beginning of either option year if it wishes to exercise the options.
2. DiTucci shall be authorized to utilize the pier at the Premises for the purpose of filling tankers with salt water. DiTucci agrees to work cooperatively with PDA-DPH and to abide by any reasonable restrictions on use which may be imposed to ensure the interests of the public at large are being served and met at the Premises.
3. Use of the Premises by DiTucci during weekends and summer peak periods may be limited at the sole discretion of PDA-DPH in order to ensure there is no interference with public use and access to the Premises. PDA-DPH agrees to work cooperatively with DiTucci to accommodate its needs, if possible, during such periods of time.
4. DiTucci's use of the Premises shall not adversely impact or interfere with the use of the Premises by the public or other individuals or entities authorized to use the facilities situated on the Premises.
5. Any expenses incurred by any agency of the State of New Hampshire or PDA-DPH to repair damages caused by DiTucci's use of the Premises shall be reimbursed by DiTucci.

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6. The Premises' natural features shall not be altered or disturbed in any way and all areas so altered or disturbed as a result of DiTucci's use of the Premises shall be repaired or fully restored by DiTucci.

7. DiTucci agrees to pay PDA-DPH a ROE fee of \$1,500.00 for the first period for the use of the Premises. Thereafter, the applicable fee shall be reviewed by PDA-DPH and may be increased by providing DiTucci with at least 45 days advance written notice. All payments shall be made on or before January 1 of each year payable to "PDA-DPH" and forwarded to Pease Development Authority, 55 International Drive, Portsmouth, NH 03801.

8. DiTucci's agreement herein that any use of the Premises is at its sole risk and that its signature below constitutes its agreement to assume full responsibility for any and all risks of loss or damage to property and injury or death to persons by reason of or incident to its entry or the entry by any of its employees, agents or contractors upon the Premises and/or the exercise of any of the authorities granted herein. DiTucci shall indemnify, defend and hold the State of New Hampshire and PDA-DPH harmless 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 ROE:

- A. from any condition of the Premises, including any building, structure or improvement thereon for which DiTucci has taken possession of hereunder;
- B. from any breach or default on the part of DiTucci to be performed pursuant to the terms of this ROE or from any act or omission of DiTucci 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 ROE on or about the areas (including dock and pier areas) arising out of or incidental to the use, management or control of the area(s) by DiTucci and activities which are subject to this ROE.

9. On or before the effective date of this ROE, DiTucci shall provide PDA-DPH with proof of required insurance coverage as outlined in Exhibit A.

10. No provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of the State of New Hampshire and no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of PDA-DPH as a body politic and corporate of the State of New Hampshire. The sovereign immunity of the State of New Hampshire is reserved to the State of New Hampshire to the fullest extent allowed under law and the sovereign immunity of PDA-DPH is reserved to it to the fullest extent allowed under law subject, however, to contractual claims arising under this ROE to the extent such are permitted by NH RSA Ch.491.8 as the same may be amended.

11. DiTucci may terminate this ROE by giving PDA-DPH thirty (30) days advance notice in writing. The provisions of paragraph 8 shall survive termination.

12. This ROE may be terminated by PDA-DPH at any time without cause or in the event of the failure of DiTucci to perform, keep and observe any of the conditions of the ROE and the failure of DiTucci to correct the default or breach within the time specified by PDA-DPH by giving DiTucci thirty (30) days written notice of termination. PDA-DPH may terminate this ROE for any other reason upon ninety (90) days advanced written notice of termination. The provisions of paragraph 8 shall survive termination.

13. This ROE may be terminated immediately by PDA-DPH in the event DiTucci fails to provide proof of insurance coverage or engages in any activity which is deemed to compromise public safety and health. The provisions of paragraph 8 shall survive termination.

14. In the performance of this ROE, DiTucci is in all respects, an independent contractor and is neither an agent of nor an employee of the State of New Hampshire or PDA-DPH. Neither DiTucci nor any of its officers, employees, agents or members shall have the authority to bind the State of New Hampshire or PDA-DPH nor is any ROE holder entitled to any of the benefits, worker's compensation or emoluments provided by the State of New Hampshire or PDA-DPH to its employees.

15. In connection with the performance of this ROE, DiTucci agrees to comply with all statutes, laws, regulations and orders of federal, state, county and/or municipal authorities which shall impose any obligations or duties on DiTucci.

16. DiTucci is responsible for obtaining all necessary permits and, if requested, shall provide copies of any and all permits to PDA-DPH as required.

17. DiTucci is responsible for providing all necessary and required safety equipment and training as may be required and appropriate to the uses allowed under this ROE.

18. This ROE may not be assigned or transferred without the express written approval of the PDA-DPH.

19. DiTucci agrees to coordinate its activities hereunder with a representative of PDA-DPH and agrees to comply with all reasonable requests of said agency and with all applicable rules and regulations of the Premises.

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DiTucci dba Lawrence Tank
ROE Hampton
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PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Date: 5/27/20

Brenda Therrien
Witness

Brenda Therrien



David R. Mullen, Executive Director, PDA

DITUCCI PETROLEUM CARRIERS INC. DBA LAWRENCE TANK

Date: 5-12-2020

Kathline M. Davis
Witness Signature

Kathline M. Davis
Witness Printed Name


Authorized Signature

President Cynthia A. DiTucci
Printed Name/Title

EXHIBIT A

TO: ALL CONTRACTORS, SUBCONTRACTORS AND/OR AGENTS

RE: MINIMUM REQUIREMENTS OF CERTIFICATES OF INSURANCE FOR CONTRACTORS/SUBCONTRACTORS WORKING ON PROPERTY OF PEASE DEVELOPMENT AUTHORITY-DIVISION OF PORTS AND HARBORS

All contractors, subcontractors and/or any agents thereof are required to provide proof of insurance to the Pease Development Authority-Division of Ports and Harbors (PDA-DPH) before the commencement of any work on PDA-DPH property. The following are the minimum requirements for insurance coverage:

1. **Commercial General Liability:** Two (2) million dollars commercial general liability coverage per occurrence; and Two (2) million dollars per project aggregate.
2. **Automobile Liability:** One (1) million dollars automobile liability coverage.
3. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
4. **Longshore and Harbor Workers Compensation Act Insurance:** *To the extent applicable* and to limits as required by Federal and State law.
5. **Environmental/Pollution Liability:** As required by activities which give rise to the necessity for such coverage and in such amounts as determined by PDA-DPH from time to time.
6. **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.
7. **Certificate Holder:** Pease Development Authority, Division of Ports of Harbors
555 Market St.
Portsmouth, NH 03801
8. **Professional Liability:** As required by activities which give rise to the necessity for such coverage and in a minimum amount of One (1) million dollars.
9. **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.
10. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage.
11. **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.

For questions, please contact the Pease Development Authority Legal Department at (603) 433-6348.

