

AUDIT REPORT



**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM G. THOMPSON, JR., COMPTROLLER**

**Audit Report on the Compliance of
P&O Ports North America, Inc.
With Its Operating and
Reimbursement Agreement
January 1, 2004 - December 31, 2006**

FN08-091A

December 16, 2008



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of P&O Ports North America, Inc., (P&O) with the terms of its agreement with the New York City Economic Development Corporation (EDC).

P&O is the exclusive operator of terminal management services for the Manhattan Cruise Terminal (MCT). Under the agreement, P&O is required to remit to EDC revenue from a per-passenger fee charged for each passenger embarking or disembarking a cruise vessel. P&O is responsible for pier repair costs up to an annual maximum of \$275,000 and for other expenditures, such as insurance and utility charges, in connection with the operations of the MCT.

The results of our audit, which are presented in this report, have been discussed with officials of the P&O and EDC, and their comments have been considered in preparing this report. Their complete written responses are included in this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads 'William C. Thompson, Jr.'.

William C. Thompson, Jr.

WCT/fh

Report: FN08-091A
Filed: December 16, 2008

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*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the Compliance of
P&O Ports North America, Inc.
With Its Operating and Reimbursement Agreement
January 1, 2004 - December 31, 2006**

FN08-091A

AUDIT REPORT IN BRIEF

Since 1997, P&O Ports North America, Inc., (P&O) has been the exclusive operator of terminal management services for the Manhattan Cruise Terminal (MCT) on the Hudson River between 46th and 54th Streets. P&O operates under an agreement with the New York City Economic Development Corporation (EDC). On January 1, 2007, a new 10-year agreement was signed, expiring December 31, 2011, with an option to renew for one additional five-year period ending on December 31, 2016.

Under the agreement, P&O is responsible for billing and collecting all fees from the cruise lines. P&O is required to remit to EDC revenue from a per-passenger fee charged for each passenger embarking or disembarking a cruise vessel. P&O is allowed to keep revenues from parking and other facility use. P&O is responsible for pier repair costs up to an annual maximum of \$275,000 and for other expenditures, such as insurance and utility charges, in connection with the operations of the MCT. Capital improvements at the piers are funded by EDC.

Audit Findings and Conclusions

P&O improperly calculated the per-passenger fee amount for calendar year 2005 and as a result underpaid a total of \$74,826 in fees to EDC. Also, P&O has not paid the City \$77,795 in outstanding water and sewer charges from October 2006 through August 2008.

With the exception of the above two findings, we concluded that P&O remitted to EDC the fees due on a timely basis and complied with the other major requirements of its agreement. P&O properly charged EDC the repair and security-service expenses, and carried the necessary insurance coverage.

Audit Recommendations

We recommend that P&O:

1. Pay EDC an additional per-passenger fee of \$74,826.
2. Pay the outstanding balance in water and sewer charges of \$77,795.

We recommend that EDC:

3. Ensure that P&O pays the additional fee of \$74,826.
4. Ensure that P&O pays \$77,795 in outstanding water and sewer charges.
5. Monitor P&O compliance with all the agreement terms.
6. Ensure that revenue from incremental dockage and wharfage is allocated to related capital improvements.

Discussion of Audit Results

We received written responses from P&O and EDC on November 6, 2008. In their response, P&O officials agreed with the report findings and provided copies of payments made to EDC and to the NYC Water Board as recommended by this audit. EDC officials responded that they received a payment from P&O and confirmed that P&O paid all outstanding water and sewer charges. With regard to recommendation #6, EDC stated that “All fees, including dockage and wharfage at the PST [Passenger Ship Terminal] are governed by the terms and conditions of EDC’s Maritime Contract with the City.”

INTRODUCTION

Background

On December 31, 1996, P&O Ports North America, Inc., formerly known as International Terminal Operating Co., Inc., entered into an Operating and Reimbursement Agreement with the New York City Economic Development Corporation. The agreement permits P&O to operate the Manhattan Cruise Terminal as a marine terminal and as a facility for trade shows, special events, conventions, and public parking. The agreement was amended three times and expired on December 31, 2006. On January 1, 2007, a new 10-year agreement was signed expiring December 31, 2011, with an option to renew for one additional 5-year period beginning January 1, 2012, and ending December 31, 2016.

P&O is the exclusive operator of terminal management services for the MCT, which consists of Piers 88, 90, and 92 on the Hudson River between 46th and 54th Streets.¹ The MCT is a modern international cruise terminal that comprises three 70,000-sq.-ft. finger piers with five, 1037-ft.-long berths capable of docking five cruise vessels simultaneously, including the new mega-class cruise ships. It has parking for 1,000 vehicles and handles more than 215 vessel calls with approximately 850,000 passengers per year.

Under the agreement, P&O is responsible for billing and collecting all fees from the cruise lines. P&O is allowed to keep revenues from parking and other facility use. The agreement requires P&O to pay EDC revenue from dockage and wharfage² collected from the cruise lines based on a fee structure established by EDC. This fee structure allows P&O to retain a base wharfage rate of \$8.58 per passenger and a base dockage rate of \$1,683 per vessel per day, and requires P&O to remit to EDC amounts in excess of the base rates charged. In addition, P&O is required to remit to EDC revenue from a per-passenger fee charged for each passenger embarking or disembarking a cruise vessel, except for passengers who have not concluded their journey (in-transit passengers). P&O is responsible for pier repair costs up to an annual maximum of \$275,000 and for other expenditures, such as insurance and utility charges, in connection with the operations of the MCT.

EDC also entered into Usage Agreements with Carnival and Norwegian Cruise Lines that established an incremental wharfage and dockage rate to support the capital investment needs and operation of the MTC. Under the agreements, EDC is responsible for all capital expenditures of the MTC.

For calendar years 2004 through 2006, P&O paid EDC a total of \$14,155,144 consisting of \$4,173,462 for per-passenger fees as well as \$8,311,554 in wharfage and \$1,670,128 in dockage fees.

¹ The agreement allows P&O to operate Pier 92 for a period of only one year. Pier 92 is used for trade shows and special events.

² Wharfage is a charge for use of the MCT facility by all passengers and vessel personnel.

Objectives

The objectives of this audit were to determine whether:

- P&O paid EDC the fees due in accordance with the provisions of the Operating and Reimbursement Agreement, and made its payments on time, and
- Complied with other major requirements of its agreement (i.e., maintaining required insurance and paying appropriate utility charges).

Scope and Methodology

The scope period of this audit was January 1, 2004, to December 31, 2006 (calendar years 2004 through 2006). To achieve our audit objectives, we reviewed and abstracted the relevant terms and conditions of the Operating and Reimbursement Agreement between EDC and P&O and the related Usage Agreements between EDC and the two major cruise lines. We also reviewed P&O's records, such as berthing calendars and daily log books, billing and financial reports, summary reports of fees due EDC, and correspondence between EDC and P&O. To obtain an understanding of P&O's internal controls, we interviewed P&O officials, conducted a walk-through of P&O operations, and familiarized ourselves with the record-keeping functions. We documented our preliminary understanding of internal controls through written narratives.

To determine whether P&O properly reported its fees due EDC, we verified the accuracy of the reported per-passenger, wharfage, and dockage fees. For the per-passenger fee calculations, we traced the total number of passengers to the daily embarking and disembarking passenger count schedules. We also determined whether the rates P&O used for fee calculations agreed with the rate schedule stipulated in the agreement.

To determine the accuracy of the wharfage and dockage fee amounts P&O billed the cruise lines, we judgmentally sampled the berth use for September 2006, the month with the highest amount of wharfage and dockage fees paid to EDC, and traced the billing information to the supporting documentation. We reconciled the number of passengers used for the wharfage fee calculation with the counts submitted by individual vessels, and compared the Gross Registered Tonnage (GRT) used for dockage fee calculation with the tonnage information from the Lloyd's List, a leading provider of maritime news and independent GRT information. Additionally, we reviewed the Usage Agreements to determine whether the appropriate rate was charged.

To ascertain the completeness of P&O's reported berth use for calendar years 2004 through 2006, we compared P&O's calendar for berth use with the daily log books to identify any discrepancies. To determine whether P&O reported all wharfage and dockage charged for calendar years 2005 and 2006, we reconciled its summary of wharfage and dockage fees with the general ledger. We reconciled P&O's payment vouchers and copies of related checks with EDC's Tenant History Record to determine whether P&O remitted to EDC the required fees on a timely basis.

To ascertain whether P&O properly submitted to EDC repair-cost claims for reimbursement in excess of the annual maximum of \$275,000, we reviewed all the vendors'

invoices to assess the appropriateness of expenditures in terms of the nature, location, and timing of the services rendered. We also traced the billing amounts to the payment records for accuracy. To determine whether P&O properly claimed half of its security services charges, we reviewed the service provider's billings and P&O's payment records to ascertain whether only 50 percent of the allowable expenses was reimbursed.

To determine whether P&O properly carried the required insurance coverage, we reviewed the insurance certificate to compare the coverage with the terms specified in the original agreement. To ascertain whether P&O properly paid its utility charges, we reviewed the summaries of utility payments for calendar years 2005 to 2007 prepared by the Department of Citywide Administrative Services. With respect to water and sewer charges, we reviewed P&O's billing and payment records and compared them with the transaction history reports from the Department of Environmental Protection (DEP).

The results of the above tests, in conjunction with our other audit procedures, while not projected to the respective populations from which the samples were drawn, provided a reasonable basis to satisfy our audit objectives.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included test of records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

Discussion of Audit Results

The matters covered in this report were discussed with P&O officials during and at the conclusion of this audit. A preliminary draft report was sent to P&O and EDC officials and discussed at an exit conference on October 7, 2008. On October 23, 2008, we submitted a draft report to P&O and EDC officials with a request for comments.

We received written responses from P&O and EDC on November 6, 2008. In their response, P&O officials agreed with the report findings and provided copies of payments made to EDC and to the NYC Water Board as recommended by this audit.

EDC officials responded that they received a payment from P&O, and confirmed that P&O paid all outstanding water and sewer charges. With regard to recommendation #6, EDC stated that "All fees, including dockage and wharfage at the PST [Passenger Ship Terminal] are governed by the terms and conditions of EDC's Maritime Contract with the City".

The full texts of P&O and EDC responses are included as addenda to this report.

FINDINGS

P&O improperly calculated the per-passenger fee amount for calendar year 2005 and as a result underpaid a total of \$74,826 in fees to EDC. Also, P&O has not paid the City \$77,795 in outstanding water and sewer charges from October 2006 through August 2008.

With the exception of the above two findings, we concluded that P&O remitted to EDC the fees due on a timely basis and complied with the other major requirements of its agreement. P&O properly charged EDC the repair and security-service expenses, and carried the necessary insurance coverage.

Underpaid \$74,826 in Per-Passenger Fee

P&O applied the incorrect rate when calculating the per-passenger fee amount for calendar year 2005. According to the agreement between P&O and EDC, for calendar year 2005, EDC would charge a per-passenger rate after the number of total passengers reached a volume of 550,000 passengers. This rate would change with every 100,000 passengers reported. P&O applied the incorrect rate to calculate the per-passenger fee after a per-passenger count of 650,001. As a result, P&O understated its reported per-passenger fee and owed EDC an additional fee of \$74,826, as shown in Table I, following.

Table I
Schedule of Underreported
Per-Passenger Fee for Calendar 2005

Passenger Volume	Auditors' Calculation Per Agreement		P&O's Calculation		Amount Underreported
	Rate	Amount	Rate	Amount	
0 - 550,000	\$0.00	\$0	\$0.00	\$0	\$0
550,001 - 650,000	6.50	650,000	6.50	650,000	0
650,001 - 749,768	4.25	424,014	3.50	349,188	74,826
Total		\$1,074,014		\$999,188	\$74,826

\$77,795 Owed in Overdue Water and Sewer Charges

P&O owes the City \$77,795 in outstanding water and sewer charges dating back to October 1, 2006. According to P&O's billing and payment records, there were 12 water and sewer accounts. However, a review of DEP records found a total of 15 registered P&O accounts. Of the additional three accounts reported in the DEP's system, one has an outstanding balance of \$77,795 dating back to October 1, 2006. Consequently, P&O owes the City \$77,795 in water and sewer charges.

Other Issue

According to the agreement between P&O and EDC, EDC is responsible for all capital improvements at the piers. EDC undertakes such responsibility subject to the availability of City capital budget in the City's capital fund. As noted in the agreements between EDC and two major cruise line companies, EDC revised the tariff structure by charging an incremental wharfage and dockage rate, the revenue from which are to be used to support the capital investment needs and operations of the MCT. According to EDC officials, the revenue received from the incremental rate is not allocated to the capital expenditures. Our review did not involve EDC's capital expenditures or their funding sources.

RECOMMENDATIONS

We recommend that P&O:

1. Pay EDC an additional per-passenger fee of \$74,826.
2. Pay the outstanding balance in water and sewer charges of \$77,795.

P&O Response: “We have reviewed and agree with the findings of the audit. . . . We are attaching copies of our payments to NYCEDC & NYC Water Board confirming that Ports America agreed and has fulfilled their obligation in accordance with the Operating and Reimbursement Agreement (FN08-091A).”

We recommend that EDC:

3. Ensure that P&O pays the additional fee of \$74,826.

EDC Response: “EDC received \$74,826 on October 7, 2008.”

4. Ensure that P&O pays \$77,795 in outstanding water and sewer charges.

EDC Response: “As of October 28, 2008, DEP confirmed that all outstanding water and sewer charges have been paid.”

5. Monitor P&O compliance with all the agreement terms.

EDC Response: “EDC will continue to ensure that P&O Ports complies with all the terms of the agreement.”

6. Ensure that revenue from incremental dockage and wharfage is allocated to related capital improvements.

EDC Response: “All fees, including dockage and wharfage at the PST [Passenger Ship Terminal] are governed by the terms and conditions of EDC’s Maritime Contract with the City. While EDC reports and tracks the incremental dockage and wharfage fees, since the City capital funds were used to fund the related improvements, EDC does not have the ability to allocate the revenues as suggested. Pursuant to EDC’s Maritime Contract with the City, 100% of the excess revenues from the operations of the Maritime Portfolio are deposited into the City’s general fund.”

Auditor Comment: Notwithstanding EDC’s contention that it cannot allocate incremental revenue to related capital improvements, it is our opinion that separating this revenue from the general fund is an important method to properly account for, and ensure that capital funding is being used for that purpose. Alternatively, if EDC was unable to properly allocate these funds, it should not have imposed the tariff at all.



November 6th, 2008

Mr. John Graham
The City of New York
Office of the Comptroller
1 Centre Street
New York, New York 10007-2341

Re: Audit Report on Compliance of
P&O Ports North America, Inc.
With its Operating and Reimbursement Agreement
FN08-091A

Dear Mr. Graham,

First, we would like to thank your staff for all their effort and the professional manner in which the audit was performed. They were exact with their inquiries and requests of data and did not cause any additional work to our staff.

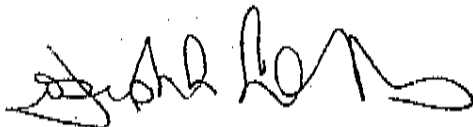
We have reviewed and agree with the findings of the audit:

- We owed for EDC an additional per passenger fee of \$74,826 applicable to Year 2005.
- We had an outstanding balance with the New York City Water Board

We are attaching copies of our payments to NYC EDC & NYC Water Board confirming that Ports America agreed and has fulfilled their obligation in accordance with the Operating and Reimbursement Agreement (FN08-091A).

If you or your staff have any questions please feel free to contact me at (973) 522-2249.

Sincerely



Joseph A. Colella
Vice President – CFO
New York New Jersey Region

Attachment

Cc: Steve Loevsky – General Manager
Laura Rhonemus – Finance Manager
Alma Fana – Audit Manager

FOR INFORMATION: DOCUMENT HAS A COLORED BACKGROUND SECURITY FEATURES LISTED ON EACH

Ports America, Inc.
99 Wood Avenue South
Iselin, NJ 08830



100047993

62-20/311

Seventy Four Thousand Eight Hundred Twenty Six Dollars and 00 Cents

DATE
September 26, 2008

AMOUNT
\$74,826.00

PAY TO THE ORDER OF

NEW YORK CITY ECONOMIC DEVELOPMENT CORP.
119 WILLIAM ST.
6th FLOOR
NEW YORK, NY 10038

A handwritten signature in black ink, appearing to read "John P. No...", is written over the printed name of the payee.

DOCUMENT HAS A COLORED BACKGROUND. SECURITY FEATURES LISTED ON BACK.

Ports America, Inc.
99 Wood Avenue South
Iselin, NJ 08830



100047228
62-20/311

DATE
August 14, 2008

AMOUNT
\$71,672.43

Seventy One Thousand Six Hundred Seventy Two Dollars and 43 Cents

PAY TO THE ORDER OF

NEW YORK CITY WATER BOARD
P.O. BOX 410
CHURCH STREET STATION
NEW YORK, NY 10008-0410

~~FILE COPY~~

DOCUMENT HAS A COLORED BACKGROUND. SECURITY FEATURES LISTED ON BACK.

Ports America, Inc.
99 Wood Avenue South
Iselin, NJ 08830



100047315

62-20/311

Four Thousand Three Hundred Thirty Nine Dollars and 49 Cents

DATE	AMOUNT
August 21, 2008	\$4,339.49

PAY TO THE ORDER OF

NEW YORK CITY WATER BOARD
P.O. BOX 410
CHURCH STREET STATION
NEW YORK, NY 10008-0410

[Handwritten Signature]
FILE COPY



New York City
Economic Development
Corporation

110 William Street
New York, NY 10038
Tel: 212.312.3963
Fax: 212.618.5738

www.nycedc.com

November 6, 2008

John Graham, Deputy Comptroller
Audits, Accountancy & Contracts
The City of New York
Office of the Comptroller
1 Centre Street
New York, New York 10007-2341

Re: Response to Audit Report on the Compliance of P&O Ports North America, Inc. With
Its Operating and Reimbursement Agreement
FN08-091A

Dear Mr. Graham:

Below is our response to the above referenced draft audit report:

Recommendation #3: Ensure that P&O pays the additional fee of \$74,826.

EDC's Response: EDC received \$74,826 on October 7, 2008.

Recommendation #4: Ensure that P&O pays \$77,795 in outstanding water and sewer charges.

EDC's Response: As of October 28, 2008 DEP confirmed that all outstanding water and sewer charges have been paid.

Recommendation #5: Monitor P&O compliance with all the agreement terms.

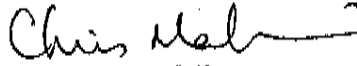
EDC's Response: EDC will continue to ensure that P&O Ports complies with all the terms of the agreement.

Recommendation #6: Ensure that revenue from incremental dockage and wharfage is allocated to related capital improvements.

EDC's Response: All fees, including dockage and wharfage at the PST are governed by the terms and conditions of EDC's Maritime Contract with the City. While EDC reports and tracks the incremental dockage and wharfage fees, since City capital funds were used to fund the related improvements, EDC does not have the ability to allocate the revenues as suggested. Pursuant to EDC's Maritime Contract with the City, 100% of excess revenues from the operations of the Maritime Portfolio are deposited into the City's general fund.

Thank you for the opportunity to respond to the recommendations in the audit report.

Very truly yours,



Christopher Malin
Controller

cc: Seth Pinsky
Jason Wright
Lee Benedict
Hope Mallari