

Port of Los Angeles

Lease Compliance Review of PBF Energy's Permit With the Port of Los Angeles

July 1, 2021 through June 30, 2023

May 2024



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EXECUTIVE SUMMARY

Purpose of the Audit

The City of Los Angeles Harbor Department (Port) engaged Sjoberg Evashenk Consulting, Inc., to conduct a permit compliance review of PBF Energy, LLC's (PBF) Permit #936. The purpose of this review was to assess the financial performance and compliance with the terms and conditions of the permit.

Findings Summary

The Port Overcharged PBF \$78,906 in Tank Rent

PBF is required to remit \$812,000, adjusted annually by CPI, in tank rent at the end of each compensation year, which runs July 1 through June 30. The permit provides that if the total wharfage and dockage tariff charges meet or exceed the sum of wharf and tank rent due, PBF has satisfied its tank rent obligation. If wharfage and dockage charges are less than the amount of tank rent due, PBF owes the difference. The audit found that the Port overcharged PBF \$78,906 in tank rent because it incorrectly determined that wharfage and dockage charges fell short of the tank rent obligation for the July 1, 2022 through June 30, 2023 period.

The Port Generally Assessed Tariff Charges Associated with Permit 936 Activity in a Manner That Aligned with POLA's Tariff No. 4; One Minor Exception was Identified

PBF must pay all applicable tariff charges according to the Port's approved Tariff No. 4. Monthly, PBF submits wharf statements to POLA that includes information about activity occurring at Berths 238 and 239 and serves as the basis for tariff charges calculated by POLA's Wharfing Division. While audit testing confirmed that wharfage and dockage charges were assessed correctly, one charge associated with pilotage services was incorrect because Wharfing staff mistakenly entered the wrong service code. As a result, the Port underbilled pilotage charges by \$505.

The Port Does Not Have a Process to Validate the Number of Barrel Units That Are Used as The Basis for Calculating Wharfage Tariff Charges

PBF contracts multiple independent tank gaugers to measure tank volume (barrel units) before and after petroleum products are transferred. PBF employees include the volume information on the monthly wharf statements that are used by Wharfing staff to calculate PBF's wharfage tariff charges. However, the Port does not have a requirement to compel PBF to submit evidence to support the volume information reflected on the wharf statements. As a result, POLA is at risk that self-reported volume information is wrong, which can result in inaccurate tariff charges being assessed and collected.

The Port Has Not Re-Instated Regular Wharfing Site Visits Eliminated During COVID

Oil terminals in California must comply with rigorous environmental and safety standards to minimize the risk of spills, protect natural habitats, and ensure the safety of nearby communities. PBF's terminals at the Port are inspected by State and local regulators, including California State Lands, South Coast Air Quality Management District, and the Los Angeles Regional Water Board. According to PBF, no deficiencies or non-compliance issues were identified by any regulators during the audit period. In addition to the regulatory oversight site visits and inspections, the Wharfing Division has historically served as the Port's day-to-day "eyes and ears" by monitoring activities on the wharf to ensure safety, security, and compliance with regulations. However, Wharfing site visits were eliminated when work-from-home requirements were put in place because of the COVID-19 pandemic. Because Wharfing staff continue to only work one site at the Port twice a week, terminal site visits have not yet been reinstated.

Recommendations

The report provides the Port with six recommendations, including the following key recommendations:

- Develop a process to ensure all wharfage and dockage charges are considered during the annual compensation reconciliations.
- Reevaluate tank rent charges since the start of Permit 936 to ensure PBF has paid the appropriate amounts according to the permit requirements. Refund any tank rent payment made associated with excess charges.
- Reinstated the Wharfing site visits.

There were no findings or recommendations to PBF.

INTRODUCTION

Background

Located in San Pedro Bay, the Port encompasses 7,500 acres of land and water along 43 miles of waterfront. The Port is involved with both passenger and cargo terminals, including cruise, container, automobile, breakbulk, dry and liquid bulk, and warehouse facilities that manage billions of dollars' worth of cargo each year. The Port is a department of the City of Los Angeles and is governed by the Los Angeles Board of Harbor Commissioners, a panel appointed by the Mayor of Los Angeles. With more than 200 leaseholders, the Port generates its revenues from leasing and shipping service fees. All Port operations are managed by the Board of Harbor Commissioners in accordance with the Public Trust Doctrine to promote maritime, commerce, navigation, fisheries, and public access to the waterfront.

In 2016, PBF Energy (PBF) purchased two oil terminal facilities from ExxonMobil: a marine oil terminal in the Port of Los Angeles on Terminal Island, which has been in service since 1923, and a crude oil storage terminal that has been in continuous service since 1961. In 2018, the Port executed the current lease (Permit 936) granting PBF the right to continue the use of Port property consisting of 40.04 acres at Berths 238-240 for the construction, operation, and maintenance of a marine oil terminal, subsurface pipelines, and storage tanks.

Included in the permit are "base rent" payments that PBF must pay to POLA every year for their use and occupancy of the berths. There are two base rent payments that PBF are required to make: land rent and tank rent.

- **Land Rent:** Rent on surface and subsurface land paid in equal quarterly installments adjusted annually based on the CPI-U index.
- **Tank Rent:** Equal to \$812,000 due at the end of each year, adjusted annually based on the CPI-U index. If wharfage and dockage charges incurred by PBF during the year meets or exceeds the sum of tank rent due, PBF will have met the requirements of tank rent.

PBF is also responsible for collecting fees related to vessel activity at the Port and remitting to POLA. These include charges such as wharfage, dockage, and pilotage pursuant to the Port's Tariff 4:

- **Wharfage:** fees associated with the use of a wharf for loading, unloading, or handling goods and cargo, such as, for PBF, petroleum products.
- **Dockage:** fees are associated with mooring or docking a vessel, such as at a wharf, pier, or bulkhead structure.

- **Pilotage:** fees associated with services provided by POLA's pilots to navigate ships safely through the port.

Oil terminals in California must comply with rigorous environmental and safety standards to minimize the risk of spills, protect natural habitats, and ensure the safety of nearby communities. Regulations cover various aspects, including storage tank construction, spill prevention measures, emergency response plans, and operational protocols. PBF's terminals at the Port are inspected by State and local regulators, including California State Lands, South Coast Air Quality Management District, Los Angeles Regional Water Board, City of Los Angeles, Los Angeles Sanitation District, US Coast Guard, and Los Angeles Fire Department.

The Port's key Divisions involved with overseeing aspects of Permit 936 compliance include:

- **Waterfront and Commercial Real Estate Division:** Oversees the Port's marine terminals, retail, dining and entertainment space, cruise terminals, marinas, and the LA Waterfront.
- **Wharfinger Division:** Monitors all waterborne activities occurring within Port areas and serves as a primary contact for the operational needs of customers.
- **Accounting Division:** Maintains the financial records, financial reporting and analysis, administration of financial accounting activities and recording of financial transactions.

Objectives

The overall objectives are to evaluate compliance with the permit (lease) between the Port and PBF focusing on three key areas:

1. Review PBF's revenue and reimbursements as identified in the lease, including the reasonableness of their self-reporting over the last two years and the Port's timely collection of any monies due;
2. Review PBF's environmental compliance with the permit and other governing agencies and PBF's effort to continue to improve the environmental health of the Port area; and
3. Review PBF's safety policies, procedures and practices, including a review of their safety records to evaluate the tenant's efforts to reduce the threat of leakage, fires, explosions, and/or other industrial accidents.

Scope

The audit covered July 1, 2021, through June 30, 2023.

Methodology

To meet the audit objectives, the audit team:

- Obtained tariff charges (wharfage, dockage, and pilotage) assessed on Berth 238 and 239 activities. Recalculated charges using Tariff No. 4 rate schedules to verify amounts charged were accurate.
- Verified rent (land and tank) payment amounts complied with permit requirements.
- Determined if any payments made by PBF were delinquent and confirmed required late penalties were assessed.
- Selected a sample of payments made by PBF to determine if the payments were properly deposited.
- Inquired about regulatory processes and activities associated with Berths 238 and 239 and about any environmental violations that have occurred. Also, researched regulatory agency websites and databases to identify any potential undisclosed environmental violations, citations, or concerns.
- Inquired about safety issues or accidents occurring at Berths 238 and 239 and reviewed associated records. Also, gathered PBF's safety policies and procedures topics and discussed PBF's activities associated with securing, monitoring, and maintaining the facilities and tanks.

Statement of Auditing Standards

Sjoberg Evashenk Consulting, Inc. (SEC) conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that auditors plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. SEC believes that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT RESULTS

Finding 1

The Port Overcharged PBF \$78,906 in Tank Rent

Permit Section 4.2.3 requires PBF to remit \$812,000, adjusted annually by CPI, in tank rent at the end of each compensation year, which runs July 1 through June 30. However, the permit provides that if the total wharfage and dockage tariff charges associated with activity at Berths 238 and 239 during the year meet or exceed the sum of wharf and tank rent due, PBF has satisfied its tank rent obligation. If wharfage and dockage charges are less than the amount of tank rent due, PBF owes the difference between the tariff charges and the tank rent requirement.

The Port's Accounting Division performs an annual compensation reconciliation to determine if PBF owes tank rent charges. As illustrated in the table below, PBF was charged and paid \$78,906 in tank rent during the audit period.

Fiscal Year	Wharfage Charges	Dockage Charges	Total Charges	Tank Rent Obligation	Obligation Exceeded?	Tank Rent Due
2021-2022	\$964,934	\$0	\$964,934	\$847,121	Yes	\$0
2022-2023	\$835,138	\$0	\$835,138	\$914,044	No	\$78,906

The audit found that the Port incorrectly determined that wharfage and dockage charges fell short of the tank rent obligation for the July 1, 2022 through June 30, 2023 period.

This occurred because dockage charges associated with Berths 238 and 239 were not considered when the Accounting Division performed its annual compensation reconciliation to determine if PBF owed tank rent. According to the Accounting Division, only wharfage charges were considered because those amounts are invoiced directly to PBF and linked to PBF in the Port's financial system. Dockage charges were not considered because POLA's Wharfinger Division sends dockage invoices to the third-party owner of the vessel that PBF charters; thus, dockage charges are not linked to PBF in the financial system. According to the Port's Waterfront and Commercial Real Estate Division (WCRED), dockage charges associated with Berths 238 and 239 should have been considered in the annual compensation reconciliation even though the Port invoices PBF's charter company for the charges rather than billing PBF directly. Had the dockage charges been appropriately considered, PBF would not have owed tank rent for the July 1, 2022 through June 30, 2023 period, as shown in the following table.

Fiscal Year	Wharfage Charges	Dockage Charges	Total Charges	Tank Rent Obligation	Obligation Exceeded?	Tank Rent Due
2021-2022	\$964,934	\$429,973	\$1,394,907	\$847,121	Yes	\$0
2022-2023	\$835,138	\$387,314	\$1,222,452	\$914,044	Yes	\$0

Recommendations

By November 30, 2024, the Port should:

1. Develop a process to ensure all wharfage and dockage charges are considered during the annual compensation reconciliations.
2. Reevaluate all tank rent charges calculated since the start of Permit 936 to ensure PBF has paid the appropriate amounts according to the permit requirements. Refund any tank rent payment made associated with excess charges.

Finding 2

The Port Generally Assessed Tariff Charges Associated with Permit 936 Activity in a Manner That Aligned with POLA’s Tariff No. 4; One Minor Exception was Identified

Permit Section 4.6.2 requires PBF to pay all applicable tariff charges according to POLA’s approved Tariff No. 4, which includes wharfage, dockage, and pilotage. Monthly, PBF submits wharf statements to POLA that includes information about activity occurring at Berths 238 and 239, which serves as the basis for tariff charges calculated by POLA’s Wharfing Division.

While audit testing confirmed that wharfage and dockage charges were assessed correctly during the audit period based on activity reflected in the wharf statements, one charge associated with pilotage services was incorrect. Specifically, pilotage invoices include multiple charges based on the following: vessel tonnage, draft surcharge, length, and a surcharge for capital improvements, maintenance, and training. According to POLA’s Tariff No.4, there are three rate schedules related to charges based on length: “entering or leaving”, “inter harbor” and “intra harbor”. The type of movement along with the overall length of the vessel form the “LOA” or “length overall” charge. For one invoice, Wharfing staff mistakenly entered the wrong service code when calculating the length charges—staff selected “inter harbor”, but the correct charge was “entering or leaving”.

As a result, the Port underbilled for pilotage services associated with Permit 936 and Berths 238 and 239 by \$505, which caused it to not receive revenues it was entitled to under Tariff No. 4.

Recommendation

By November 30, 2024, the Port should:

3. Develop a process to minimize data entry errors by staff to ensure the correct charges are assessed and collected as required under Tariff No. 4.
4. Collect the \$505 undercharge from PBF or the owner of the vessel PBF charters.

Finding 3

The Port Does Not Have a Process to Validate the Number of Barrel Units Used as the Basis for Calculating Wharfage Tariff Charges

As previously described, PBF submits monthly wharf statements to the Port that includes self-reported information about activity occurring at Berths 238 and 239, such as vessel description and volume of petroleum transferred. The information on PBF's wharf statements serve as the basis for tariff charges calculated by the Wharfing Division. While Wharfing staff cross check the vessel information against the Marine Exchange to ensure all vessel activity is reflected on the wharf statement, it must rely on the volume of petroleum provided by PBF without any independent verification.

According to PBF, it contracts multiple independent tank gaugers to measure tank volume before and after PBF-hired vessels transfer petroleum products. The tank gaugers provide PBF with handwritten tickets detailing the volume information that was measured and PBF employees input the information into an Excel spreadsheet. A PBF employee also performs the same measurements with their own tank gauges to confirm the volumes were measured correctly. To finalize the volume information, the tank gaugers and PBF perform an independent series of corrections based on temperature and water infiltration. Finally, PBF engages the independent tank gauger to compare their measurements to arrive at an official measurement. PBF employees include the final volume information on the monthly wharf statements that PBF provides to the Wharfing Division.

Audit testing found that PBF maintains most handwritten tickets produced by the tank gaugers. However, the Wharfing Division does not require any available documentation to be provided in support of the wharf statements because the Port does not have a requirement to compel PBF to submit evidence to support the barrel units reflected on the wharf statements. As a result, POLA is at risk that self-reported volume information is wrong, which can result in inaccurate tariff charges being assessed and collected.

Recommendation

By November 30, 2024, the Port should:

5. Develop a process to periodically compare and spot check self-reported volume data submitted by PBF on wharf statements to

handwritten tickets prepared by the tank gaugers. For example, this recommended comparison procedure could occur in conjunction with the annual compensation reconciliation process.

Finding 4

The Port Has Not Re-Instated Wharfinger Site Visits Eliminated During COVID

Oil terminals in California must comply with rigorous environmental and safety standards to minimize the risk of spills, protect natural habitats, and ensure the safety of nearby communities. Regulations cover various aspects, including storage tank construction, spill prevention measures, emergency response plans, and operational protocols. PBF's terminals at the Port are inspected by State and local regulators, including California State Lands, South Coast Air Quality Management District, Los Angeles Regional Water Board, City of Los Angeles, Los Angeles Sanitation District, US Coast Guard, and Los Angeles Fire Department. PBF receives written notices if regulators identify any deficiencies or non-compliance issues, which are required to be provided to the Port per Permit 936 Section 104.6.1. According to PBF, no deficiencies or non-compliance issues were identified by any regulators during the audit period.

In addition to the regulatory oversight site visits and inspections, the Wharfinger Division has historically served as the Port's day-to-day "eyes and ears" by monitoring activities on the wharf to ensure safety, security, and compliance with regulations. According to the Wharfinger Division, prior to the Covid-19 pandemic, wharfingers would conduct site visits at the terminals twice a week to assess potential hazards and identify any issues that may pose risks to personnel or operations. If any safety issues were identified, Wharfinger would immediately notify WRCED and the tenant. However, Wharfinger site visits were eliminated when work-from-home requirements were put in place because of the pandemic. Because Wharfinger staff continue to only work one site at the Port twice a week, terminal site visits have not yet been reinstated.

Recommendations

By November 30, 2024, the Port should:

6. Reinstatement of the Wharfinger site visits.

APPENDIX A: PORT OF LOS ANGELES' RESPONSE

We are awaiting management response. Once received, it will be appended to the report.