

NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP.

FREIGHT TARIFF NYCH 8000

(For cancellations, see Item 1)

**DEMURRAGE, SWITCHING
AND
MISCELLANEOUS RULES AND CHARGES
APPLYING FROM, TO, BETWEEN
AND AT POINTS ON THE
NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP.**

LOCAL TARIFF

ISSUED: October 26 , 2005

EFFECTIVE: December 1, 2005

ISSUED BY

Donald B. Hutton, CEO
New York Cross Harbor Railroad Terminal Corp.
5266 Seneca Street
West Seneca, NY 14224

(The provisions published herein, if effective, will not result in an effect on the quality of the human environment.)

TARIFF NYCH 8000

<p>ITEM 1</p> <p style="text-align: center;">CANCELLATION NOTICE</p> <p>Freight Tariff NCHYH 8000 cancels Freight Tariffs NYCH 9002 and 9003-series, and any and all other corresponding conflicting provisions..</p>	<p style="text-align: center;">RULES AND OTHER GOVERNING PROVISIONS RULES AND REGULATIONS - UNLIMITED</p>
<p style="text-align: center;">RULES AND OTHER GOVERNING PROVISIONS RULES AND REGULATIONS - GENERAL</p>	<p>ITEM 50</p>
<p>ITEM 5</p> <p style="text-align: center;">DESCRIPTION OF GOVERNING CLASSIFICATIONS</p> <p>Except as otherwise provided, this tariff is governed by the Rules in Tariff UFC 6000-series, Uniform Freight Classification.</p>	<p style="text-align: center;">CARGO LOSS AND DAMAGE PROVISIONS</p>
<p>ITEM 10</p> <p style="text-align: center;">SUPPLEMENTS AND REISSUES</p> <p>All references in this tariff or any supplement to other publications for rates or other information or to tariff items includes tariff supplements or reissues of tariff items.</p>	<p>1. GENERAL APPLICATIONS</p>
<p>ITEM 15</p> <p style="text-align: center;">METHOD OF CANCELLING ITEMS</p> <p>Each time NYCH issues a new tariff item canceling the previous tariff item, the new item shall bear a new letter after the item number. Thus, Item 300 would be Item 300-A, and so forth.</p>	<p>a. Provisions of this item take precedence over all other liability provisions contained in this publication, except where expressly modified.</p> <p>b. The shipper agrees to indemnify and hold harmless the rail carriers from any loss, damage, personal injury or death resulting from the shipper's failure to comply with the provisions contained herein. Acceptance of a shipment by the rail carriers for transportation shall not be considered as a waiver of shipper's liability.</p> <p>c. Any loss or damage(s) that arise out of shipments that are delayed in transit are limited to the specific amount of cargo loss or damage occurring to product.</p> <p>d. Carriers will not be liable for loss, damage, or delay caused by an Act of God, public enemy, public offense, the authority of law, riots, strikes, acts of civil disobedience, inherent quality of characteristic of the commodity, natural shrinkage, an act of default of the shipper, owner or receiver or from shipments stopped and held in transit at the request of the shipper, beneficial owner or receiver.</p> <p>e. Carrier's liability will not exceed the actual amount of physical loss or damage sustained to the cargo plus any costs incurred through the efforts to mitigate such loss and/or damage. Carrier will not be responsible for special damages, consequential damages, indirect loss or punitive damages arising from the loss, damage, suspected contamination, or delay to cargo, nor will carriers be liable for any losses attributable to fluctuation in the market value of the cargo. Furthermore, rail carriers will not be liable for any losses, direct or indirect, which result from an interruption of rail service, nor do rail carriers guarantee rail service on any scheduled time frame. Rail carriers will not be responsible for interest or attorney fees. Rail carrier's maximum liability for freight loss or damage will not exceed the liability of the billing party or the party tendering the cargo to the rail carrier.</p> <p>f. In the event of an act or omission of any party involved in the transportation process; (shipper, carrier, receiver) is not the sole cause but contributes to any loss or damage, each party will be liable for only that portion of the loss or damage caused by its negligence.</p> <p>g. Rail carriers are not liable for temperature, corrosion or humidity related losses unless mechanical protective service is requested, paid for and carrier owned or leased equipment is used.</p> <p>h. Rail carriers are not liable for loss or damage caused by defective equipment when such equipment is not owned, or leased by rail carriers.</p> <p>i. In the absence of any other evidence, a seal breach will not create a presumption of loss or contamination.</p>
<p style="text-align: center;">RULES AND OTHER GOVERNING PROVISIONS RULES AND REGULATIONS - UNLIMITED</p>	<p style="text-align: right;">(Continued on next page)</p>
<p>ITEM 20</p> <p style="text-align: center;">NORMAL BUSINESS HOURS</p> <p>8:00 AM to 5:00 PM, Monday through Friday, excluding holidays.</p>	
<p>ITEM 30</p> <p style="text-align: center;">HOLIDAYS OBSERVED BY NYCH</p> <p>New Year's Day*</p> <p>Martin Luther King's Birthday</p> <p>Presidents Day</p> <p>Memorial Day</p> <p>Independence Day*</p> <p>Labor Day</p> <p>Thanksgiving Day</p> <p>Day after Thanksgiving</p> <p>Christmas Eve</p> <p>Christmas Day*</p> <p>*When this date occurs on a Sunday, the following Monday will be observed as the holiday.</p>	
<p>For explanation of terms and explanation of abbreviations and reference marks, see last page of tariff.</p>	

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RULES AND OTHER GOVERNING PROVISIONS RULES AND REGULATIONS - UNLIMITED	SECTION 1 CAR DEMURRAGE RULES AND CHARGES
<p>ITEM 50 (Cont'd.)</p> <p style="text-align: center;">CARGO LOSS AND DAMAGE PROVISIONS</p> <p>2. LOSS/DAMAGE VERIFICATION & DISPOSITION PROVISIONS</p> <ol style="list-style-type: none"> a. Rail carriers have the right to inspect, weigh or reject shipments at origin, en route or at destination for noncompliance with the provisions contained in applicable publications. b. Carriers reserve the right to inspect damaged cargo. If rail carrier has notified shipper or consignee that rail carrier is invoking this right, as a condition precedent to recovery of any claims, the consignee must immediately notify the rail carrier upon discovery of any damage and allow carrier or its agent to inspect. c. Failure of the rail carrier to inspect damaged cargo, for whatever reasons, will not relieve the burden of the claiming party to establish that cargo was received in a damaged condition, nor will it be considered an admission of liability by the rail carrier. d. Shippers and/or consignee must mitigate damage situations by accepting the damaged cargo unless it is without salvage value. Shippers and/or consignees may not abandon damaged or partially damaged shipments to the rail carrier when the damaged shipments retain value. e. Product that is abandoned to the rail carrier in an undamaged condition shall be sold for account of whom concerned and salvage proceeds only, less any salvaging expenses incurred, shall be remitted to the beneficial owner. <p>3. CLAIMS</p> <ol style="list-style-type: none"> a. As a condition of precedent for payment of a claim, claims must be filed in writing on approved form and submitted within twelve months of delivery date. Claims may only be submitted by the beneficial owner or a party to the transportation terms or agreements. b. All written claims must include the following documentation: <ol style="list-style-type: none"> 1. A demand for payment of a specific amount. 2. Information identifying the rail shipment including equipment initials and number, shipper and receiver's names, shipping date and commodity. 3. Origin records or certification as to the condition and quantity of the cargo at the time tendered to the rail carrier. If shortage is involved, origin seal records must be furnished. 4. Verification of the amount claimed such as certified invoices. 5. Evidence as to the disposition of damaged cargo. c. Carrier reserve the right to summarily deny any and all claims submitted that do not contain all or part of the aforementioned documentation. 	<p>ITEM 100</p> <p style="text-align: center;">DEFINITIONS</p> <p>The following definitions shall apply for the purpose of interpreting this tariff:</p> <p>ACTUAL PLACEMENT is the placement of a car so that it is available for loading or unloading at the customer's facility or at a place designated by the customer.</p> <p>CONSTRUCTIVE PLACEMENT is the placement of a car at a point other than that at the customer's facility or a place designated by the customer after NYCH notifies the customer. NYCH reserves the right to constructively place a rail car whenever a car cannot be actually placed because of a condition attributable to the customer.</p> <p>CUSTOMER is the party tendering (the consignor) or receiving (the consignee) freight regardless of whether the party is the one responsible for payment of freight charges.</p> <p>DEMURRAGE is a charge levied by NYCH for holding a rail car actually or constructively placed at the customer's facility beyond the allowable free time.</p> <p>FREE TIME is the amount of time in days between the time a rail car is actually or constructively placed at the customer's facility and the time that demurrage begins to run.</p> <p>FORWARDING INSTRUCTION is a bill of lading or other direction given by the customer to NYCH containing all information necessary for NYCH to transport the freight.</p> <p>LOADING is the act of placing cargo in a rail car pursuant to published loading and clearance rules and the furnishing of forwarding instructions.</p> <p>OPEN GATE is the unrestricted access (physical or otherwise) by NYCH to the customer's facility so as to permit it to switch cars in or out of that facility.</p> <p>PRIVATE CAR is a rail car bearing shipper (customer) or other nonrailroad reporting marks.</p> <p>PRIVATE TRACK is a track designated for use by an individual rail customer. It includes customer-owned tracks at the customer's facility and tracks owned or controlled by NYCH and leased to the customer wherever located.</p> <p>PUBLIC DELIVERY (OR TEAM) TRACK is a track owned or controlled by NYCH and available to the general public for the loading or unloading of rail cars.</p> <p>RELOAD is the complete unloading and subsequent reloading of the same rail car.</p> <p>RESPOT OR RESPOTTING is the movement of a car or cars at the customer's facility solely for the purpose of allowing another car or cars to be placed there.</p> <p>TENDER is the actual or constructive placement of a rail car and notification by NYCH to a customer that the car is now available for unloading or loading.</p> <p>UNLOADING is the complete removal of cargo by the customer (consignee) from a rail car and notice by the customer to NYCH that the car is empty and available for pick up.</p>
<p>ITEM 75</p> <p style="text-align: center;">REBILLED CARS</p> <p>Any car of which rebilling is requested will have a charge of \$300 per car assessed against requesting party.</p>	
<p>For explanation of terms and explanation of abbreviations and reference marks, see last page of tariff.</p>	

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SECTION 1 CAR DEMURRAGE RULES AND CHARGES	SECTION 1 CAR DEMURRAGE RULES AND CHARGES
<p>ITEM 110</p> <p style="text-align: center;">GENERAL RULES</p> <ul style="list-style-type: none"> • These rules are applicable at all points on NYCH • The disposition of a car at its point of detention determines the purpose for which the car is held and the rules applicable thereto • Except as noted, all cars bearing railroad markings shall be subject to demurrage • Demurrage shall begin to run at 7AM on the day following its actual or constructive placement by NYCH and shall end once the customer notifies NYCH that a car is ready for pick up • Notice by customer that a car has been loaded or unloaded and is available for pick up shall be communicated by either fax or email transmission • Where a customer wrongfully refuses to accept a car containing cargo or fails to claim cargo in a car without giving NYCH instructions as to the future disposition of that car, NYCH may sell or dispose of the cargo in that rail car once it has been held beyond the legal requirement. • A customer may properly refuse to accept for loading a car when car is unsuitable for loading. 	<p>ITEM 120 (Cont'd)</p> <p style="text-align: center;">CUSTOMER NOTIFICATION TO NYCH</p> <p>Customers shall provide oral telephone notification to NYCH that cars have been unloaded or loaded and are ready for pick up, followed up in writing by either fax or email transmission.</p>
<p>ITEM 120</p> <p style="text-align: center;">NYCH NOTIFICATION TO CUSTOMERS</p> <p>NYCH shall provide customer notification as follows:</p> <ol style="list-style-type: none"> 1. For customers having their own private track or located on a private track, actual delivery of a car will constitute notification. 2. For customers having their own private track or located on a private track who are unable to receive cars because of a condition attributable to the customer, notice of constructive placement shall constitute notification. 3. For customers having their own track and providing their own plantsite switching, delivery of cars to the property line or a point designated by the customer for delivery of traffic shall constitute notification. 4. For customers receiving freight at a public delivery track, NYCH shall provide notice to any person designated by the customer to receive notice when the car is actually placed. 5. Should a car be stopped in transit, NYCH shall provide notice to the customer ordering the car at the point of stoppage. 6. When a customer/consignee has refused to accept a car upon delivery, NYCH shall provide notice to the consignor. <p>The time and date of the written confirmation shall be used for computation of demurrage charges.</p> <p>NYCH customer notification shall include the car reporting marks and car number and, where the cargo has been transferred from one car to another car while in transit, NYCH shall also provide the customer with the reporting marks and car number of the origin car.</p> <p>NYCH shall provide oral telephone notification of delivery to customer, followed up in writing by either fax or email transmission.</p> <p style="text-align: center;">(Continued in next column)</p>	<p>ITEM 140</p> <p style="text-align: center;">CARS HELD FOR LOADING</p> <p>A car shall be considered tendered when NYCH has provided notice to the customer of an empty car ordered by the customer and the car has been placed, either actually or constructively.</p> <p>A car shall be considered released when the customer has provided forwarding instructions and, in the case of customers providing their own plantsite switching, the car has been delivered to the property line or the point designated by the customer for delivery of traffic. Cars deemed by NYCH to have been over-loaded or improperly loaded at origin shall not be considered released until the load has been adjusted.</p> <p>Cars set for loading will be allowed five (5) days free time after which demurrage shall be charged at a rate of \$60 per car per day or fraction thereof for each day held beyond the free time allowed.</p> <p>ITEM 150</p> <p style="text-align: center;">CARS HELD FOR COMPLETE UNLOADING</p> <p>A car shall be considered tendered when the customer has provided notice to NYCH that the car is empty and available or has been reloaded and forwarding instructions have been provided NYCH.</p> <p>A car shall be considered released when the customer advises NYCH that a car is empty; in the case of customers providing their own plantsite switching, the car has been delivered to the property line or the point designated by the customer for release; and, in the case of cars unloaded and reloaded, when the customer provides NYCH forwarding instructions.</p> <p>Cars set for unloading will be allowed five (5) days free time after which demurrage shall be charged at a rate of \$60 per car per day or fraction thereof for each day held beyond the free time allowed.</p>
For explanation of terms and explanation of abbreviations and reference marks, see last page of tariff.	

TARIFF NYCH 8000

SECTION 1 CAR DEMURRAGE RULES AND CHARGES	SECTION 2 SWITCHING RULES AND CHARGES
<p>ITEM 160</p> <p style="text-align: center;">BILLING AND ACCOUNT ISSUES</p> <p>NYCH shall bill monthly for all cars released during the calendar month. Payment is due within 30 days' receipt of NYCH's invoice. Invoices not paid within 30 days shall incur interest at the rate of one and one half percent (1 and ½%) per month. Where an invoice remains unpaid after 90 days, NYCH shall have the option of suing to collect the amount of the invoice plus interest and reasonable attorney's fees, placing the customer on a cash basis, or discontinuing rail service until the account is placed on a current basis.</p> <p>Customers having facilities at separate locations cannot be combined but customers having two or more facilities at the same station will be combined into one account. Absent other arrangements in writing, demurrage will be charged to the consignor at origin or the consignee at destination who will be responsible for payment.</p> <p>Chargeable days will be Monday through Sunday.</p>	<p>ITEM 200</p> <p style="text-align: center;">DEFINITIONS</p> <p>INTRA-PLANT SWITCHING is the movement of a rail car from one track to another track within the same plant or industry or from one location to another on the same track within the same plant or industry.</p> <p>INTRA-TERMINAL SWITCHING is the movement of a rail car from one track to another track of the same railroad within the same rail station or between the track(s) of an industry and the track(s) of the railroad or between the tracks of two separate industries served by the same rail station.</p> <p>INTER-TERMINAL SWITCHING is the movement of a rail car from one track on one railroad to a track on another railroad, when both tracks are within the switching limits of the same station.</p>
<p>ITEM 170</p> <p style="text-align: center;">RELIEF OF DEMURRAGE CHARGES</p> <p>A customer seeking to dispute a charge must present its claim in writing to NYCH by the last day of the calendar month following the month in which the invoice was issued, stating fully the basis for its dispute.</p>	<p>ITEM 210</p> <p style="text-align: center;">INTRA-PLANT SWITCHING CHARGE</p> <p>NYCH will perform intra-plant switching at \$250 per car.</p>
	<p>ITEM 215</p> <p style="text-align: center;">INTRA-TERMINAL SWITCHING CHARGE</p> <p>NYCH will perform intra-terminal switching at \$250 per car.</p>
	<p>ITEM 220</p> <p style="text-align: center;">INTER-TERMINAL SWITCHING CHARGE</p> <p>NYCH will perform inter-terminal switching at \$250 per car.</p>
<p>For explanation of terms and explanation of abbreviations and reference marks, see last page of tariff.</p>	

TARIFF NYCH 8000

SECTION 3 MISCELLANEOUS RULES AND CHARGES	SECTION 3 MISCELLANEOUS RULES AND CHARGES
ITEM 300 CARS HELD/STORED ON TRACKS OF NYCH NYCH will assess a customer a charge of \$25 per car per day for storing a rail car (loaded or empty) on NYCH's tracks due to either customer request or the inability of the customer to accept the car. Charges will be computed from the date placed on the track until the date released from the track. Any request for storage must be approved in writing by NYCH.	ITEM 375 CHARGES FOR DEDICATED BARGE SERVICE NYCH will assess a customer a charge of \$7500 for the dedicated use of a barge to haul up to 9 rail cars for the first three days and for \$1500 per day for each day of use thereafter.
ITEM 310 CARS INTERCHANGED IN ERROR NYCH will assess a charge of \$500 per car against the delivering carrier for cars delivered to NYCH in error.	EXPLANATION OF ABBREVIATIONS AND REFERENCE MARKS NYCH - New York Cross Harbor Railroad Terminal Corp. FT - Freight Tariff [A] - Addition [I] - Increase [NC] - Brought forward without charge [R] - Reduction [C] - Denotes change in wording that results in neither an increase nor a reduction
ITEM 320 CARS ORDERED BUT NOT USED NYCH will assess a charge of \$500 per car against the person, firm, or industry ordering such car when an order for cars is canceled or a car is released empty. NYCH will not assess a charge on a car that is not in a proper condition for loading as per Item 330.	(Underscored portion denotes change.)
ITEM 330 CARS NOT SUITABLE FOR LOADING NYCH will assess a charge of \$500 per car against the carrier furnishing a car when that car is refused or rejected by the customer because it is not in proper condition for loading.	
ITEM 340 CARS FOUND EMPTY OR LOADED NYCH will assess a charge of \$500 per car against a delivering carrier on inbound cars received for unloading but found empty and on inbound cars received as empty and found loaded or partially loaded. NYCH will assess a charge of \$500 per car against a customer on outbound cars released as loaded but found empty and on outbound cars released as empty and found loaded or partially loaded.	
ITEM 350 RESPOTTING CHARGE NYCH will assess a charge of \$500 per car against a customer for cars that have been placed at the customer's place of loading or unloading and must be moved in order to place or move other cars to that place.	
For explanation of terms and explanation of abbreviations and reference marks, see last page of tariff.	