Formal issue 12#01A  17 January 2012

Helping to move rail and port traffic through New York, New England, the Maritimes, & eastern Québec. A weekly trade newsletter.

*Article unchanged from e-bulletin.
**Blue type in article: changes from e-bulletin.
Blue header & table of contents: new article

REGIONAL

CSXT, NS: Totals on new rail facilities, but no details.*

NEW YORK

Albany: Part II, details companies there.

QUÉBEC

[No report.]

CONNECTICUT

Connecticut ports: Should look at potential for container barge or feeder service. Other bidders.**

MAINE


MDOT: Competition for IRAP funds begins in January.*

Pan Am: EnergyUSA resumes rail service in Portland, Maine.*

 MASSACHUSETTS

CSXT: East Brookfield owns none of right-of-way of North Brookfield Railroad. Much work ahead.*

MC/GU: ETC Capital, would-be purchaser of Cape Rail, sues Cape Rail shareholders.*

Pan Am: Eastman Gelatine in Peabody changes hands, but rail traffic should continue.*

Pan Am: Deerfield okays additional propane tanks for space heating.*

NEW HAMPSHIRE

MBRX: Federal court orders mediation.

Pan Am: NH General Court effort to stop NHRTA from planning commuter rail vetoed.*

RHODE ISLAND

[No report.]

VERMONT

NECR: Dubois salt facility operating, though main building destroyed by fire.*

NECR: Turtles may safely cross in Vernon.*

VRS: With Omya, moving toward a start on construction of the Middlebury spur.*

VRS: Rutland okay to tax on leased property.*

MARITIMES

CBNS: Point Tupper fractionation plant will continue making propane.*

Sydney: Ernie Thrasher looking at a coal hub.*

RAIL SHIPPERS/RECEIVERS

A cross-reference to companies mentioned here.

PEOPLE, POSITIONS, EVENTS

[No report.]

FROM THE PUBLISHER

CP investor Bill Ackman wants Hunter Harrison to take the reins. Harrison, in an interview, said he wants back into railroading. CN does not want him at CP, but what about Pan Am? As far as I know, Fink peres’s position as head of Pan Am Systems remains vacant. Perhaps Mellon and NS can induce Hunter to New England?

-Chop Hardenbergh

Next formal issue: 31 January

REGIONAL

CSXT: 2011 ADDITIONS
5 January, Jacksonville, Florida. MASSACHUSETTS AND NEW YORK CONTRIBUTED SOME OF THE TOTAL 124 NEW OR EXPANDED FACILITIES ON CSXT OR ITS SHORTLINE PARTNERS, the railroad announced today.

Massachusetts projects added 17 jobs with a customer investment of $3,281,000, New York added 63 jobs with a customer investment of $9,540,000. {CSXT press release}

The company declined to provide any further details, reported spokesperson Bob Sullivan. {e-mail to ANR&P 7.Jan.12}

Compare to NS
NS provided even less detail, listing only the location of 73 new industries and the expansion of 27 existing industries along its rail lines in 2011.

It did note that new plants and expansions announced in 2011 represented an investment of $9.5 billion by Norfolk Southern customers and are expected to create 6,800 jobs in the railroad’s territory, in future years potentially generating more than 152,000 carloads of new rail traffic annually. {NS press release 9.Jan.12}

NEW YORK

PORT OF ALBANY

Note: Correspondent Laurel Rafferty has completed an encompassing overview of the Port of Albany. I am publishing it in three parts.


PART I [11#12B] covered Background, Existing conditions, & Capital improvements

PART II: PORT OPERATIONS AND TENANTS

The Albany Rensselaer Port District Commission (ARPDC) currently has 24 tenants, as identified on the Map below. The second map shows key operations located within the broader Port area but outside ARPDC jurisdiction.

Part II
4 Port Operations and Tenants
4.1 Bulk other than fuel.
   4.1.1 Grain
   4.1.1.1 Grain
   4.1.1.2 Salt
   4.1.1.3 Scrap metal
   4.1.2 Break bulk
   4.1.3 Liquid bulk
   4.1.4
   4.2 Project cargo
   4.3 Fuels – ethanol
   4.4 Fuels – other
   4.5 Recycling operations

4.1 BULK OTHER THAN FUEL

4.1.1 DRY BULK CARGO

4.1.1.1 Grain. Grain, one of the Port’s top commodities, is handled by Cargill, the Port’s largest tenant in total site square footage.

Three of the four Cargill business units* which have operations at the port are grain-related: grain handling and storage, flour (grain milling), and its newest division, livestock feed. {Pam Allen in Albany The Business Review 4.Feb.11} Grain cargoes of wheat and corn arrive by rail from mid-Continent to the Port’s 10.5 billion-bushel (or about 315,000 tons) elevator.

*One wag noted a few years ago that if Cargill didn't differentiate between its operations, about one-third of the business phones in the world would be answered by someone saying "Cargill".

Rail unloading system. Cargill installed a spur and a new rail unloading system in March of 2008 ‘so that BNSF trains of 110 cars can be unloaded efficiently within a 15-hour time limit’ meeting eligibility requirements for the unit train discount. {POA MP10}

Bunting said Gould Erectors of Ravenna NY constructed the unloading system.

Cargill handling and storage facility. The entire handling and storage facility was built by Cargill, who transferred ownership to the Port upon completion in 1932, {Tom Bunting, Cargill production supervisor in POA AR10; discussion with Rafferty 21.Nov.11} Warehouses hold product for the longer-term storage. Cargill uses the silos for shorter term storage, because they have higher temperature and moisture levels. {2010 POA MP}

Grain exports. From the elevator, grain moves to ships at the dedicated Berth No.7, where Rogers Terminals, a Cargill subsidiary, loads it.

Grain milling. Grain also moves to Horizon Milling ['Cargill Flour' on the map], a joint venture of Cargill, and CHS, Inc.* The Albany facility mills wheat flour in bag and bulk, with a capacity of 23,500 cwt (1 cwt equals 100 pounds). {Horizon Milling Web site} Flour from the mill moves via truck to bakeries and distributors throughout the Northeast. Animal feed (raw wheat bran) moves to farmers in the same geographic area. {Rafferty discussion with Alex Allen, Horizon Milling facility manager 12&13.Jan.12}

*The CHS website calls it the nation’s leading cooperative, owned by farmers, ranchers and co-ops across the United States. It was formed from two cooperatives: Cenex and Harvest States. The company operates petroleum
From Port of Albany deliver salt by rail to its Vermont salt piles. See 09#11B.

Inbound salt by ship. Prior to 2008, Cargill brought substantial amounts by ship, and even greater prior to 2002, when the federal government for anti-trust reasons required Cargill to support competitor American Rock Salt. In 2009 and 2010 it has brought in none. {01#12A, POA AR10 & MP10} Cargill salt from its Sussex, New Brunswick, mine moves by ship out of Saint John [see gypsum story in 11#11B].

4.1.1.3 Scrap metal.
This moves by truck or rail to the Port for export, generally to the Mediterranean. {POA MP10}

Hudson River Recycling (HRR). HRR, a port tenant owned by Sims Metal Management and located on about 12 acres {2010 POA MP}, processes, stores, and exports scrap metal. It recycles all common metal-based products, such as cars, aluminum cans, steel beams, and refrigerators. {company website}

Rensselaer Iron & Steel (RIS). RIS [sister company of Grimmel Industries, scrap dealer in Topsham, Maine – see 09#11B], a port tenant on about 10 acres, shreds cars, exports the scrap metal, and rails the processing residue (auto fluff) to domestic locations. {POA MP10} Federal Marine Terminals (FMT) stevedores. {Tom McGuiness, POA IT manager, discussion with Rafferty 24.Oct.11}

Sims Metal Management (SMM). SMM (the former Port through the Port, originating in Scandinavia. Federal Marine Terminals does the stevedoring, moving the pulp to sheds on the Albany side.

'Owner of the pulp, Valluiks Bruk AB, in Sweden, arranges all delivery shipments via Whetston Fiber trucking.' {Tom McGuiness, POA IT manager, in email to Rafferty 27.Oct.11}

4.1.3 LIQUID BULK (NON-FUEL) – MOLASSES.
Molasses is the leading non-fuel liquid bulk cargo handled at the Port. Westway Terminals, a part of the Westway Group, handles molasses and other liquid bulk cargoes on 5.65 acres of the ARPDC on the Albany side, consisting of 43 tanks with a capacity of 8 million gallons.

Westway Feed Products are produced at customer facilities in the Northeast, using grain and a molasses-based liquid mixed at the Port. {Scott Holcombe, Westway Terminals Manager, discussion with Rafferty 4.Oct.11 and 12.Jan.12} Molasses arrives by rail from Florida (95% from US Sugar), and by water from foreign origins; the liquid moves by tanker truck to customers.

4.1.4 LIQUID BULK (NON-FUEL) – OTHER
Westway also leases tanks for the storage of fertilizers and other chemicals of other firms. {Westway Terminals web site; Hudson River Lesson Plans on NYS DEC Web site; 2010 POA MP}

Fertilizer arrives at the Port by vessel from foreign sources and other chemicals arrive from across the United States by rail. Both fertilizers and other chemical products
are transported from the Port by tanker truck to final destinations. {Scott Holcombe, Westway Terminals Manager, discussion with Rafferty 4.Oct.11 and 12.Jan.12}

FMT handles lines and surveyor supervision of vessel discharges. Westway Terminals carries out all other operations, transferring products from vessel to truck for other firms, and maintaining Westway’s tanks, pipeline, and other equipment, as well as their rail facilities. {POA MP10}

4.2 PROJECT CARGO

4.2.1 Energy-related.
The Port handles inbound and outbound energy-related heavy-lift project cargoes such as steam turbines, generators, and wind turbines. {Hudson River Lesson Plans on NYS DEC Web site}. FMT does the stevedoring at the Port’s marine terminal, and storing of cargo in the terminal’s open space. {POA MP10}

With the upgrade of the marine terminal wharf, four heavy-lift cargo ships can now be loaded at one time, twice the port’s previous capacity [see 11#12B]. General Electric Company’s (GE) plant in Schenectady NY is a major source of this cargo. Steam turbines and generators manufactured by GE are transported via the Port of Albany to power plants worldwide, and its wind-turbine blades to wind-power projects throughout the Northeast. {Eric Anderson in Albany Times Union 21.Sep.08}

Some energy-related project cargo deliveries in 2008: windmill hubs and cells from Germany, blades from Brazil, and steel from Thailand for use in the Empire Generating LLC’s 635MW natural gas-fired power plant in Rensselaer. {Pam Allen in The Business Review 10.Nov.08}

4.2.2 Non-energy-related Project Cargo.
According to the Port of Albany 2010 Master Plan, the Port played an important role in supporting Alstom Transportation’s production supply chain to deliver over a thousand subway cars to the New York City MTA. Body shells for the subway cars moved from Brazil through the Port to Hornell NY for systems installation, assembling, and testing. {POA MP10}
Atlantic Northeast Rails & Ports

4.3 Fuels -- Ethanol

Albany has two major ethanol terminals: Buckeye Terminal and Global Terminal. A production facility never got off the ground.

Ethanol volumes were 914,159 short tons for 2009 (the most recent data available) for the entire Port within and outside the Port District (the area extending approximately from the southern border of Albany (from Cabbage Island or Creek Island) to the northern city borders of Albany and Rensselaer). {Amy Tujaque, USACE Waterborne Commerce Statistics Center, email to Rafferty 21 Nov.11}

4.2.2.1 Buckeye Terminal. Buckeye occupies the 30-acre site at the southern-most point of the port district on a long-term lease.

In August of 2008, Buckeye Albany Terminal, a subsidiary of Buckeye Partners L.P. (limited partnership), paid $46.5 million to acquire the Albany-based ethanol and petroleum products distribution terminal of LogiBio Albany Terminal, LLC, an affiliate of U.S. Oil Company and LogiBio LLC, which acquired it from Cibro.

According to Buckeye Partners, the terminal facilities include tanks with an active storage capacity of 1.8 million barrels, two deep-water docks, and ethanol unit train offloading capability.

Forrest E. Wylie, chair and chief executive officer of general partner Buckeye GP LLC, described the terminal as “a major ethanol distribution hub in the northeastern United States. Ethanol arrives at the terminal by rail car and is distributed from the terminal by barge and truck.” {Buckeye press release}

Ethanol arrives from the Midwest at the CSXT rail yard next to the Port, and is piped to Buckeye tanks. Some is mixed with gasoline and delivered by truck to gasoline stations in the Capital region. Much is barged to terminals along the Hudson and into greater New York. {POA MP10}

4.2.2.2 Global Partners Terminal. Global Partners acquired its Albany Terminal facility from Exxon Mobil in 2007. "The Albany facility provides large and flexible capacity, a deep-water dock, blending opportunities, a water-treatment plant and significant expansion opportunities." (company press release 19 Mar.07)

Global upgraded the facility, which lies outside the District boundary [see map in 11#01A] from 737,000 barrels to 1.2 million.

Global ethanol. In August 2010 Global received its first unit train of ethanol. [See 11#01A for more details.] If Global’s Revere ethanol terminal comes to pass [see 11#05A], trains may originate at Albany.

Global crude oil. In late 2011, CP began delivering unit trains of Bakken crude to Global’s Albany terminal, for furthering by barge to the Philadelphia area [see 11#10B].

Global petroleum products. Global for many years has operated a unit train out of Albany to its Burlington Vermont terminal. The train carries gasoline, fuel oil, and diesel. [See 07#10B.]

4.2.2.3 Production facility cancelled. In 2008 Albany Renewable Energy signed a lease with the ARPDC, planning a $350 million plant. [See 11#01B.] The lease was terminated by mutual agreement. {Larry Rulison in Albany Times Union 23 Aug.11} Now that the ethanol subsidy was not renewed by the US Congress, the future of this appears doubtful.

4.4 Other Fuels

Buckeye, Global Partners, and other facilities in the broad port area outside the Port District [see Map] handle heating oil, jet fuel, and other petroleum products. Though not reported on by the Port, these cargoes are the largest by volume on the Hudson River north of New York Harbor and the Port of Albany.

Total volumes of petroleum and petroleum products moved by ship in the entire Port of Albany area were 112,000 short tons foreign and 5,186,000 short tons domestic. {Hudson River Lesson Plans on NYS DEC Web site, undated; US ACOE Waterborne Commerce Statistics Center 2009 data}.

<table>
<thead>
<tr>
<th>Petroleum/all commodity volumes (tons)</th>
<th>2009</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Commodities*</td>
<td>7,177,977</td>
<td>5,297,521</td>
</tr>
<tr>
<td>Petroleum Products</td>
<td>8,104,817</td>
<td>14,525,425</td>
</tr>
<tr>
<td>Port of Albany ARPDC &amp; non-ARPDC</td>
<td>5,297,521</td>
<td>7,177,977</td>
</tr>
<tr>
<td>Hudson River (Upper Bay to Waterford)</td>
<td>8,104,817</td>
<td>14,525,425</td>
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</tbody>
</table>

* All Traffic Types – Domestic & Foreign, All Traffic Directions {USACE Waterborne Commerce Statistics Center}

4.5 Recycling Operations

4.5.1 Waste Management began materials recycling operations at the Port 17 years ago, on about five acres. An enclosed material processing building of approximately 38,000SF has an approved existing design capacity of 749 tons per day. In 2010, it handled 8,900 tons of recycling.

According to Ken Bevis, the facility manager, the facility is “working to increase that volume and reduce costs in 2011 through improved sorting methods”, an objective it achieved.

The facility now has single-stream recycling capability and increased volumes for 2011. The facility serves nine New York counties including Albany, moving waste in and processed material out by truck to Waste Management’s own facility in the Syracuse area, where it is sorted and marketed.

Municipal waste. In 2009 Waste Management applied to accept municipal solid waste at this facility. It was denied. {POA AR10; Waste Management Fact Sheet, company letter attachment, 8 Oct.09; Ken Bevis, facility manager, in discussion with Rafferty 12 Sep.11 and 24 Oct.11; Tom McGuiness, POA it manager, email to Rafferty 27 Oct.11}

4.5.2 Sierra Processing, a facility of Waste Connections Inc, has a new single-stream processing facility, and a traditional processing facility as well.
Single-stream recycling. The single-stream recycling operation, opened in 2010 owned at the time by County Waste and Recycling, later acquired by Waste Connections. The single-stream operation takes place on a site of approximately 12 acres in a 165,000SF facility with a processing capacity of 650 tons/day. Operating at capacity, and running 24 hours/day, the facility is undergoing a couple million-dollar investment in sorting equipment, which is anticipated to increase volumes by 50% by next year.

The facility serves a broad geographic area of 100 miles radius in the Hudson Valley area, extending east to the Massachusetts border. Material for processing is picked up and delivered by truck.

Processed material is shipped to manufacturers, 30% going to paper mills in the region, 20% of plastics as well as additional amounts of aluminum tins going to domestic manufacturers within a 500-mile radius of the plant, and 40% exported overseas. Transport to domestic destinations is by truck; overseas destinations are reached by container vessels via the Port of New York and New Jersey, with delivery to the PONYNJ by truck. The company would use the Port of Albany if they could, but Albany no longer has container operations. {The Saratogian 18.Nov.10; Michael Rorvik, facility manager, discussion with Rafferty 6.Oct.11}

Traditional recycling. Traditional recycling of specific grades of paper and containers has occurred here since the mid-1990s. Simpler than single-stream, the process involves no sorting, just packaging in bales, inventorying, and sending out. Ten to fifteen thousand tons are recycled per month at the facility. The operation serves a 60-mile radius geographic area; all transport is by truck. {Michael Rorvik, facility manager, discussion with Rafferty 13.Jan.12}

**CONNECTICUT**

**PW: NEW CUSTOMER**

28 December, Portland. *A LOCAL DISPOSAL COMPANY IS ADDING A SPUR* to its yard here. Lincoln White, a town building official, said R.E.D. Technologies is already operating a yard next to the railroad for impacted soil. “Trucks dump the soil there.” White said Red had not “pulled any construction permits” and the railroad needed none.

An official at R.E.D said the company was adding rail to the site, but deferred more detail to Adam Westhaver, company vice-president. {ANR&P discussions}

*The new spur*

PW and Northern Rail Services are constructing a new switch and spur. {NERails e-list}

*Other customers in Portland*

Mid-State Recovery, a subsidiary of Murphy Road, closed after a roof collapse. Most the building is now hauled away, but White said Mid-State will rebuild.

The other PW-served facility, Smurfit-Stone, closed in 2010 through bankruptcy. RockTenn bought the entire company, after it emerged from bankruptcy, in May 2011. In New England, RockTenn still has a containerboard mill in Uncasville, a container plant in Wakefield, Massachusetts, and a sheet plant in Springfield, Massachusetts. {RockTenn website}

**CONNECTICUT PORT STUDY**

29 December. *HOW MUCH WILL THE MOFFATT & NICHOL WORK LOOK AT CONTAINER FEEDER?*

Michael Ludwig, senior biologist at Ocean and Coastal Consultants (a COWI company) in Trumbull Connecticut, noted that the most direct route from Port Jersey (the container terminals in Elizabeth and Newark) to Connecticut is either a road or water option.

He asked of Chuck Beck at ConnDOT: 'In the State's effort to upgrade Connecticut waterborne cargo movement, will there be an effort to identify where the containers on Connecticut roads are currently going? Understanding what the existing container

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*Portland, Connecticut, 26 December 2011. The main track has been removed in this spot, a few hundred feet east of the former Mid-State Recovery plant, which was destroyed last winter in a heavy snow storm.*

*Look east. The former Smurfit-Stone plant lies beyond the brick two-storey building. Mid-State lies behind the photographer. {courtesy LB Carlson}*
movements into and out of Connecticut are and how those existing transport patterns might be reconfigured by using waterborne transport would be a useful tool.'

Canal system a model?
Ludwig added: 'The NY Canal System asked questions about containers-on-barges opportunities last year and produced an interesting report of their findings.* While Connecticut doesn't have New York's inland waterways, it has their characteristics and is on one of the most congested traffic corridors in the US.'


Earlier studies
Ludwig wrote on 29 December: 'I'm aware of the original studies on container traffic into Bridgeport and other Connecticut ports. Connecticut has averaged a study on these types of topics about every three years since the early 2000s. Bridgeport actual awarded a contract to one operation [barge to Trailerbridge and tug to Dann Ocean Towing – see 06#04A]. I'm interested to see if the use pattern is changing as the result of the economics in the region.

'The reason I circulated the NY study is that they offer that a process is needed to appreciate then develop a program. This isn't a "build it and they will come" environment.

'I will say that prior studies identified the Hartford/Springfield area as a container receipt hub. That situation made Bridgeport a good RO/RO site but not a LO/LO while New Haven was a good LO/LO site. Unfortunately, the Port of NY & NJ doesn't get excited about RO/RO [see 07#12A].'

Ludwig said Bridgeport lacks laydown space, so that containers must move immediately off the barge and onto the highway (RO-RO). New Haven does have laydown space and therefore can do LO-LO. {e-mail to ANR&P 29-Dec.11}

Connecticut ports and feeder service - correction
The 21 December Connecticut Maritime Commission meeting discussed attracting the American Feeder Line service. Martha Klimas corrected the account in the draft minutes [see 11#12B] to state:

Martha Klimas stated that the AFL met with the North Atlantic Port Authority at the NAPA meeting in June. AFL presented its coastal (Halifax, New Bedford, NJ and Florida) shipping lane concept. AFL expressed that they have a specific vessel design in mind for the service. Most of the CT representatives present concluded that that AFL was looking for CT to make a deal. {e-mail to ANR&P from Commission secretary Chuck Beck 3-Jan.11}

Other bidders
Brian Durand of Connecticut's Office of Policy and Communications wrote that the other proposers to our port study RFP (won by Moffatt and Nichol) were:

Halcrow, The Louis Berger Group, Parsons Brinckerhoff, Milone and MacBroom, Martin Associates. {e-mail to ANR&P 11-Jan.11}

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**MAINE**

**MDOT: RAIL SOLICITED**

3 January, Augusta. **MDOT IS REQUESTING APPLICATIONS FOR ITS INDUSTRIAL RAIL ACCESS PROGRAM** (IRAP). Nate Moulton, director of the rail program, sent the announcement which said in part:

'MaineDOT currently has $1 Million programmed for IRAP that will be available beginning July 1, 2012. Applications may be found on the IRAP webpage with a deadline for submission of February 29... In addition MaineDOT requests that entities that anticipate applying for IRAP funds submit a short pre-application to MaineDOT by January 20, 2012. IRAP provides financial assistance to businesses and shipper for investment in rail or freight rail-related infrastructure located on, within or adjacent to the general railroad system. The intent of the program is to stimulate economic and employment growth through generation of new or expanded freight rail service and transportation efficiencies to Maine businesses as well as to enhance intermodal transportation in the State. This State investment will be matched at a minimum 50/50 match level with local and/or private industry funds. IRAP is a competitive program with applications scored based on several criteria as outlined on the IRAP webpage at the following link: http://www.maine.gov/mdot/ofbs/irap.htm.' {e-mail to ANR&P}

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**PAN AM: CUSTOMER RETURNS**

3 January, Portland. **ENERGYUSA PROPANE HAS RESUMED RECEIVING THE PRODUCT BY RAIL.**

Kevin Fitzgerald of the company said rail was one means of supply of a “three-legged stool.” If one leg breaks,” the others can supply the product. EnergyUSA is using the Sea-3 facility in Portsmouth, New Hampshire, as the marine leg.

Fitzgerald could not estimate the number of rail carloads for 2012; he acknowledged the number would lie between “five and five hundred.” {ANR&P discussion}

**The property remains for sale**

The EnergyUSA facility lies on land leased from Unitil [see 11#09B]. Alec O'Meara of Unitil reported: 'As of today (1/4) the parcel is still for sale and while there are currently no formal offers on the table, I can confirm multiple parties have expressed an interest in some or all of the available land and negotiations are ongoing.' {e-mail to ANR&P}

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**MASSACHUSETTS**

**CSXT:MORE RE NEW RAILROAD**

4 January, East Brookfield. **THE NORTH BROOKFIELD RAILROAD OWNS THE RIGHT OF WAY IN EAST BROOKFIELD**, according to Mark Violette, chair of the
East Brookfield Planning Board. Dan Bigda seeks to re-open the line [see 11#12B].

'It is my understanding that the North Brookfield Railroad Company obtained title to the properties in the late 1800s and presumably still owns where the tracks used to be. I do not believe that East Brookfield owns any of this land by deed or easement.

'It is also my understanding that [NBRR] leased the line to Penn Central, who officially abandoned its use in 1972 - 1973, and the rails and ties were removed shortly after.

'The Town of North Brookfield has yet to contact our board pertaining to any issue with this land.'

Master plan wrong
The 2007 North Brookfield Master Plan states: 'There is an abandoned rail spur that extends from the active CSX railroad in a northerly direction through East Brookfield and into North Brookfield for a length of four miles before it concludes at the former Aztec property.

'This was the North Brookfield Branch of the Boston & Albany Railroad. Bought by the Penn Central Railroad in 1968, the North Brookfield Branch was abandoned in 1972. The tracks have been pulled up and all that remains is the railroad 5 right-of-way.

'The Town of North Brookfield bought the right-of-way in the late 70s and set up a corporation to manage this resource. This corporation is known as the North Brookfield Railroad Company and the Town’s Board of Selectmen acts as the Corporation’s Board of Directors. The Company files corporate income tax on an annual basis. Currently there are no plans under consideration for either reviving the railroad or using its right-of-way for other purposes. It should be noted that East Brookfield owns its portion of the railroad right-of-way and the Town’s 2006 Open Space & Recreation Plan has targeted the right-of-way for future use as a rail-trail, bike path or roadside trail.' {Town website}

But Violette wrote: 'I do not believe that the excerpt from the NB Master Plan is completely correct.' {e-mail to ANR&P 4Jan.11}

Work needed
A quick view, from the westbound Lakeshore Limited on 4 January, of the point where NBRR diverges from the CSXT main line in East Brookfield shows much work remains, though the right-of-way appears to have been cleared of brush and encroachment. The bridge over the watercourse between Lake Lashaway and Quaboag Pond looks unable to support any load at all, to the untutored eye of your editor. {ANR&P observation}

ETC v MC: WRONG DEALING?*
9 January, Dedham. DID OFFICERS OF MASSCOASTAL PULL THE RUG OUT FROM UNDER A DEAL TO SELL TO ETC CAPITAL? ETC alleges that happened in summer 2011, and John Delli Prisco of Grafton & Upton Railroad took over instead.

History according to ETC
Some 10,000 voting shares of Cape Rail (the parent of MassCoastal) exist. Chris Podgurski and Lori Podgurski of Dedham own 3200 shares as joint tenants.

Andrew Reardon owns 3200 shares; John Kennedy, Dan Wahle, and Ted Michon own the rest.

On 13 June 2011, ETC Capital of Farmington Hills, Michigan, sent to Kennedy a letter of intent (LOI) offering to buy the stock of Cape Rail.

On 15 June, Cape Rail shareholders unanimously passed a resolution accepting the LOI.

Terms of resolution and LOI The LOI provided ETC with 'exclusivity until closing' and complete confidentiality.

The resolution stated that the shareholders of Cape Rail would 'take all actions necessary to close the transaction within 90 days....'

After 15 June ETC met and talked with the five owners. According to the complaint, 'ETC repeatedly requested financial information...from Reardon, but ETC's requests were repeatedly ignored.'

On 16 August, ETC learned that Podgurski and Reardon had shopped the ETC deal to Grafton and Upton 'for the primary purpose of entering into a deal that was perceived as more advantageous' to the Podgurskis and Reardon.

On 17 August, Podgurski and Reardon held a shareholders' meeting without Kennedy, Wahle, or Michon. The meeting voted to remove them as directors and reduce the number of directors to three.

Enter GU
The Podgurskis and Reardon then voted John Delli Prisco, owner of the Grafton & Upton Railroad, as the third director of Cape Rail. Delli then was voted the chief executive officer of Cape Rail. [This, finally, explains John Delli's sudden appearance at MC. See 11#08A.]

The legal stance
On 10 November, ETC filed suit in Norfolk County Superior Court against the Podgurskis and Reardon, labelling their actions as breach of contract, breach of covenant of good faith and fair dealing, an unfair trade practice, tortious interference with a contractual business relationship, and a civil conspiracy.

Request for an injunction
ETC asked the court to halt the dealings with Delli Prisco, fearing the Podgurskis and Reardon would sell their shares to Delli.

Injunction denied; case in Michigan too
On 18 November Judge Barbara Dortch-Okara denied the ETC request. She saw neither a reasonable likelihood of success on the merits, nor irreparable harm.

'The contract 'indicates that it imposes no binding obligation on the parties to conclude the sale transaction.'

'The court also notes that there is an action pending in the state of Michigan against Cape Rail, Inc. which addresses the same issues as the case in this court.'

Next step
The Podgurskis and Reardon filed a motion to dismiss, then
FOR SHIPPERS:
Current services include distribution, cross-dock, and side-track leasing

Storage: four roofed areas with a total of 32,000SF, plus 10,000SF enclosed.

Cross-dock: CSXT service for all car types, 286,000 pounds. Up to 20 car spots. Trackmobile switching.

Distribution: Flat-bed services within a 300-mile radius by affiliate Ray’s Transportation, Inc.

Side-track leasing: Up to 20 car spots.

Located 60 miles north of New York City.

mailing address: 42 Argenio Drive, New Windsor, NY 12553

FOR RAILROADS:
Current services include distribution, tie-plating, & recycling

Removal, reuse, and disposal of track materials.

New track materials warehoused, repackaged, palletized, and delivered.

Pre-plating of ties, and lease of proprietary tie-plating machine.

Location info on Shipcsx.com
CSX-served at Ray’s Transportation, 55 Windsor Highway (Rt.32), New Windsor, NY.

PAN AM: CUSTOMER SOLD*
9 January, Peabody. BONES WILL CONTINUE TO MOVE INBOUND BY RAIL, now that Rousselot has purchased the gelatine plant. Ed Hurley, president and CEO of Eastman Gelatine, the Kodak subsidiary and former owner of the plant, said it received about six cars of bone per week, or about 300 per year.

Acid return?
At this point, acid arrives at Savage Safe Handling in Auburn, Maine, and is trucked to Peabody because Pan Am and Eastman could not agree on moving it by rail [see 07#08B]. Hurley said resuming acid by rail, which would cost less, is “an option for the future” which Rousselot might pursue.

Future for the plant and for Hurley
On 22 December 2011 Eastman Kodak Company announced that, consistent with its previously announced intention to sell non-core assets to sharpen the Company’s focus on its digital growth initiatives and accelerate Kodak’s transformation to a digital company, it has agreed to sell its Eastman Gelatine Corporation business to Rousselot, part of the Vion Food Group.

About 95 Eastman Gel employees associated with the business will continue with the business following the closing. Brad W. Kruchten, president of Kodak’s Film, Photofinishing and Entertainment Group, said that Rousselot is positioned to help Eastman Gelatine continue the recent growth in its sales outside the photographic industry.

Dirk Kloosterboer [apparently no connection to Kloosterboer Bayside – see 11#12B], vice-chair of the Vion board, said: “This acquisition contributes to our strategy of worldwide presence in gelatine and proximity to customers.” {Kodak press release}

Hurley noted that in 2011, about 50% of the plant product was sold for photo purposes, and 50% for pharmaceutical and food uses. “The evolution” toward the latter two uses will continue, he predicted, though Rousselot has agreed to meet Kodak’s need for gelatine for a certain amount of time into the future.

Rousselot is sending a French plant manager to succeed him, Hurley said. The company has 12 gelatine...
An indication of better times

Town Administrator Bernie Kubiak reported:

'We were not compensated for [the town expenditures for a] 2006 derailment [see 08#06B], however Pan Am did make a contribution to the Old Deerfield Fire District ($500.00) independent of that controversy.

'We've been working collaboratively with PAS and the Department of Environmental Protection on addressing haz waste concerns on the site. Check http://eastdeerfieldrailyard.erm.com/home.cfm?process (there's also a link on the town's website).

'The railroad's addressed fuel storage issues by installing a new storage facility for diesel but that's on state property and the town doesn't license it.

'PILOT [payment in lieu of taxes] and tax payments are being made fairly timely.' {e-mail to ANR&P 11.Jan.12}

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NEW HAMPSHIRE

MBRX v PAN AM: MEDIATION

11 January, Boston. THE APPEALS COURT ORDERED MEDIATION BETWEEN THE TWO PARTIES. In federal district court in December, Pan Am won the motion to dismiss MBRX's suit requesting damages for Pan Am's barring of MBRX owner Peter Leishman for life [see 11#12B]. MBRX appealed.

The mediation process

Local Rule 33.0 adopted by the First Circuit Court of Appeals 'mandates mediation of all civil appeals, except habeas corpus, prisoner petitions, pro se cases, National Labor Relations Board (NLRB) enforcement petitions and original proceedings, such as mandamus.

'Although the rule grants Settlement Counsel the discretion to decide in which cases the parties shall be
required to attend a pre-argument conference, it is the practice to require such a conference in all eligible cases unless the information supplied by the parties demonstrates, in the opinion of Settlement Counsel, that there is no reasonable likelihood of settlement. Such cases amount to a very small percentage of the cases eligible for the program.' {court website}

Scheduling
The mediation, formally labelled 'Civil Appeals Management Program (CAMP) Pre-Argument Settlement Conference' is scheduled for 2 February.

Presence of principals required
The notice of date states: 'Unless attendance by a party or party representative is excused with the express, prior approval of the Settlement Counsel, all persons necessary to make a decision to resolve this matter shall be personally present at the conference without limitation on their authority to negotiate and commit to terms that, in their discretion, may be acceptable.' {text of notice in case 12-1031}

Previous efforts at mediation
MBRX has sought mediation since the problem began, first at the STB, which Pan Am never agreed to [see 10#05B] and then at the district court level. Pan Am opposed the court mediation [see 11#07B].

PAN AM: NEW HAMPSHIRE CAN PLAN TO USE ITS TRACKS*
4 January, Concord. THE NEW HAMPSHIRE RAIL TRANSIT AUTHORITY MAY NOW CONTINUE ITS PLANNING OF COMMUTER RAIL. The General Court passed HB 281 in spring 2011 which would have limited the Authority's power to push commuter rail [see 11#02A]. Governor John Lynch vetoed the bill. House Speaker William O'Brien, R-Mont Vernon, a longtime foe of taxpayer-subsidized commuter rail, delayed this May 2011 veto test vote until the first day of the 2012 session to try to rally enough override support.

But the House this day failed to reach the two-thirds majority needed to override the veto, so the Authority survives.

State Representative Brian Rhodes, D-Nashua, said the bill would circumvent years of study that haven’t cost state taxpayers anything. “Regardless of whether you think rail is a good or bad idea, there is a need to study and this bill will not give the business community fair chance.”

Rail Authority Chair Peter Burling said the veto failure marked a victory for business partners who donated $121,000 to support further study of the plan. “This allows us to do our job, get the planning grant and get that analysis completed. I couldn’t be happier with what the House has done.” {Kevin Landrigan in Nashua Telegraph 5-Jan.11}

NECR:SALT FACILITY SURVIVES*
6 January, Middlesex. FIRE DESTROYED THE MAIN

NECR: ASSISTS OTHER BEINGS*
4 January, Vernon. THE RAILROAD IS HELPING TURTLES by creating 15 spotted turtle crossings over a 700-foot section of track to assist the rare species’ journey to their documented nesting area. The new openings will prevent future deaths of the spotted turtles as they attempt to reach their vernal pools.

NECR hired ECI Rail Constructors of South Burlington. It completed 12 by the end of 2011. The crew digs out the ballast between the railroad ties, pulls two of them out, places a steel structure on top, and leaves the stone out of the middle portion to allow the turtles room to crawl underneath before replacing the ties. {Chris Garafolo in Brattleboro Reformer 4-Jan.12}

[Some may joke about this effort, or compare the turtle speed to trains. I support other species on Earth, and railroads as a good way to help them. Editor]

VRS: LOCAL TAX LEVY OK*
19 December, Rutland. VRS MUST PAY PROPERTY TAXES ON A PARCEL OF LAND IT LEASES, according to a 19 December decision by Vermont Superior Court Judge Geoffrey Crawford.

Under Vermont law, railroad property is exempt from local property tax. The law also exempts property leased by a railroad, as long as the state has appraised the property.

The railroad and the state failed to coordinate an appraisal of the property, so the City of Rutland correctly levied a tax on the leased property.

Assistant City Treasurer James Manning said the delinquent taxes on the two parcels – part of the former Mintzer Property off West Street – totaled $19,774.

VRS President David Wulfson said the railroad had just bought one of the parcels from the Gartner family and would continue to lease the other. He said the lease included an agreement to pay all taxes on the property and that he intended to appeal the decision.“The decision is wrong and we’ll take it to the end until we get a correct one.” {Gordon Dritschilo in Rutland Herald 2-Jan.12}

VRS: MORE MARBLE?*
3 January, Burlington. VRS EXPECTS TO DECIDE ON FUNDING THE MIDDLEBURY SPUR IN THE SPRING, said Chief Financial Officer Mary Ann Michaels. {ANR&P discussion}

In April 2011 Omya spokesperson Linda Pleiman wrote: 'Omya is committed to the future of our Vermont operations and we seek to use rail wherever possible. Our Vermont facility typically moves 75 to 80% of our finished products by rail, as rail is more economical and
environmentally friendly. The use of the Otter Creek Railroad for ore transportation would allow Omya to remove 70,000 truck trips annually from Route 7.

'We are currently analyzing costs and financing options for the construction and operation of Otter Creek Railroad. We expect this process to be complete by mid-year.'

The proposal also includes plans for a loading facility near the quarry to enable other businesses to better access the freight rail service.

The Middlebury spur and Omya
For more than a decade, Omya has worked on using rail rather than trucks to move raw material from the quarry in Middlebury to the processing plant in Florence. [See 01#01B, describing the Conservation Law Foundation’s effort to revoke Omya’s Act 250 state permit because Omya had not moved ahead on building the spur.]

The 3.3-mile spur will run from the quarry across private property to the VRS main line through Middlebury, whence VRS trains will move it to Florence.

Now, two years after the FHWA issued a Record of Decision [see 10#02A] endorsing the spur as the best alternative, Omya and VRS are still working on financing. In January 2010, Joe Flynn, VAOT rail project manager, said the state will begin planning, but before it lays out any significant effort or funds, Omya and Vermont Railway need to secure financing. VAOT’s share, estimated at $8 million, involves highway-related work and will come out of the $30 million federal earmark.

Looking for money
VRS formed the Otter Creek Railroad (OCR) in 2003 to operate the 3.3-mile spur. OCR as of April 2011 was assembling final engineering plans for the rail spur. With those plans are in place, OCR will apply to the Federal Rail Administration’s Railroad Rehabilitation & Improvement Financing (RRIF) program for a loan to finance the project, currently estimated at more than $30 million.

Need for eminent domain?
To build the spur, OCR must purchase a right of way from private landowners. If the landowners do not voluntarily sell, OCR may use eminent domain. The state’s railroad eminent domain statute states:

Title 5 § 3520. Right to take land and water
A railroad corporation may lay out its road, not exceeding five rods wide, and may purchase or otherwise take lands or materials necessary for making or securing its railroad, and such water and in such quantity as is required for the uses of the road, with the right of entering upon the land and constructing and keeping in repair necessary aqueducts.

Public good?
The Fifth Amendment to the US Constitution states in part:

nor shall private property be taken for public use, without just compensation.

In 2005, the US Supreme Court in Kelo v City of New London, 545 U.S. 469, decided that states and other governmental organizations with the power of eminent domain were free to decide the definition of public good, and could limit it as permitting private entities to seize private property for economic development if that were deemed in the public good. The Court ‘has defined that concept broadly, reflecting its longstanding policy of deference to legislative judgments as to what public needs justify the use of the takings power.’

In response, Vermont and other states tightened their eminent domain statutes to eliminate economic development as a reason, except in blighted instances. However, the General Assembly specifically excluded the eminent domain powers of railroads and some other entities from the tightening. The Vermont language reads thus:

Title 12 § 1040. Eminent domain; restrictions on use; conferring of private benefit; economic development
(a) Notwithstanding any other provision of law, no governmental or private entity may take private property through the use of eminent domain if the taking is primarily for purposes of economic development, unless the property is taken pursuant to chapter 85 of Title 24 (urban renewal).
(b) This section shall not affect the authority of an entity authorized by law to use eminent domain for the following purposes:

1. transportation projects, including highways, airports, and railroads;
2. public utilities, including entities engaged in the generation, transmission, or distribution of electric, gas, sewer and sewage treatment, or communication services;
3. public property, buildings, hospitals, and parks;
4. water, wastewater, stormwater, flood control, drainage, or waste disposal projects.

For the Middlebury spur, said Michaels, the public good comes in the form of removing an estimated 70,000 annual Omya truck trips from Route 7 and “decreasing congestion and the environmental impacts for all who travel on Route 7.”

Additional companies
Michaels confirmed that Omya is the only business formally signed up to use the rail spur at this point, but said OCR is recruiting other businesses, such as Green Mountain Beverage which will soon occupy an adjacent property, to join in its use. “We have every intention to grow,” Michaels said.

"Accept the project"
State Representative Paul Ralston, D-Middlebury, has looked at the state’s railroad statutes, studied the rail spur decision and spoken with VAOT officials including then-rail chief Joe Flynn to find remedies for constituents living near the project.

Ralston said amending the rail eminent domain statute would do little good, as he has been informed that in cases where Vermont law and federal law conflict, the federal rules carry the day.

The FHWA Record of Decision issued last year “legitimizes the project to go forward. It has been approved. There is no longer any question about that.” At this point, Ralston said the town, neighbors, and all who might be affected should influence how the project is built. “Now is an
opportunity to engage the railroad for the best possible outcome, given the railroad has broad powers under federal law, including eminent domain."

No Act 250
In February 2010, it was decided that the project did not need to go through the state land-use statute, Act 250. Ralston hopes that Act 250 will apply to one part, the proposed Route 7 underpass. Because VAOT will pay for it with earmarked federal funds, the pass-through should trigger state and local scrutiny.

Local landowners object
Middlebury attorney Fritz Langrock represents some of neighbors of the proposed rail spur. His clients might request a court ruling on whether the project meets the public good standard. "You can only take property for public use," Langrock said. "You actually have to prove, through the Vermont and federal constitutions, that it is for public use." If the residents lose that argument, a court will probably allow construction to begin during negotiations over compensation for land taking.

Michaels said Omya has not ignored the neighbors, but added company officials believe it will be more productive to interact with them when and if financing comes together on the project. "As financing comes into place and we know how much the cost is going to be, we will definitely have outreach with the neighbors and work with them. We are kind of in a lull right now with the neighbors." {John Flowers in Addison Independent 21.Apr.11}

Omya outlook for 2012
Pierre Masuy, the Florence plant manager, recently updated the Pittsford Select Board on Omya’s business outlook, something the company does several times a year. He later recounted his presentation to a reporter at the turn of the year.

Omya forecasts 2012 sales from its Florence calcium carbonate plant as flat; 2011 was down slightly from 2010. Throughout its North American region, Omya’s outlook remains cautious for the coming year.

Omya’s worldwide operations make both slurry and dry calcium carbonate for a variety of industries. The Florence plant’s major customers are the paper, paint and plastics industries. Between 75-80% of the finished product is shipped by rail, the remainder by truck.

For 2012, Masuy said the Florence plant “sees some exciting opportunity for growth in the plastic markets as we continue to work on developing new products for this segment of our business.” {Bruce Edwards in Rutland Herald 2.Jan.12}

CBNS: GAS TO CONTINUE?*
January, Point Tupper. THE RAILWAY SHOULD CONTINUE TO GET THOUSANDS OF CARLOADS OF NATURAL GAS LIQUIDS over the next decade. ExxonMobil Canada wants to extend for another ten years its 10-year licences off Sable Island granted in 2002. They expire in five months.

ExxonMobil submitted its request to extend its operating licences to the Nova Scotia Utility and Review Board in September. If approved by the board, operations at its Point Tupper fractionation plant in Richmond County and the Goldboro gas plant in Guysborough County will continue. The sub-sea pipeline from the Thebaud platform, the hub of the $3-billion Sable project’s offshore activity, and the natural gas liquids pipeline that connects the gas plant to the fractionation plant, will endure.

The Goldboro gas plant processes 17 million cubic metres of gas per day, while daily operations at the Point Tupper fractionation plant receive 14,000 barrels of liquids like butane, propane and condensate. {Colleen Cosgrove in Halifax Herald 2.Jan.11}

The propane moves out by tank car. Allan MacDonald, a board member of Transport Action Canada Atlantic, reports that 12 to 15 cars of liquid propane gas move west out of Point Tupper each night. {e-mail to ANR&P 3.Jan.11}

SYDNEY: COAL HUB?*
5 January. PROVINCIAL ENERGY VENTURES IS NEGOTIATING A NEW 20-YEAR LEASE ON THE ATLANTIC CANADA BULK TERMINAL AT THE PORT HERE. PEV has a link to Xcoal Energy and Resources in Latrobe, Pennsylvania.

The terminal, which could potentially become a major coal transshipment facility, is jointly owned by three provincial government agencies, said Steve Smith of the Department of Transportation and Infrastructure Renewal. {Discussion with ANR&P correspondent Tom Peters 5.Jan.12}

PEV signed the original lease in May 2002 with former owner American Metals & Coal International. [See 02#04B]

Xcoal connection
PEV and Xcoal are linked through Ernie Thrasher, president of PEV and chief executive officer of Xcoal, the largest U.S. exporter of metallurgical coal from the U.S. in 2010. In that year, Xcoal exported approximately 11 million tonnes of coal using ports in Baltimore and Hampton Roads.{X-coal website}

Xcoal expected revenues greater than $3 billion in fiscal year 2011 on exports of 13 million to 15 million tonnes of U.S. coking coal and anthracite. The majority of the coal is headed for Asian markets. [See 11#10B Regional for report on coal crowding in Baltimore.]
Vessels discharging in Europe can ballast to Nova Scotia for loading, saving as much as 3.5 days of additional ballast to the U.S. East Coast and make their way to Europe in shorter time. The transit time for loaded vessels to ports in Asia is 1.5 days longer than directly from U.S. East Coast coal loading ports, but Thrasher said the additional time on the loaded trip is offset by the reduced ballast time back. {Platt’s article} 

ANR&P has requested an interview with Thrasher but he has not returned phone calls or emails. The National Mining Association, which handles media queries for U.S. Coal Exporters Association, was asked if other U.S. coal exporters were looking at Thrasher’s Sydney idea. ‘We have heard rumors regarding your question, but have no hard data to provide,’ said NMA’s Carol Raulston. {e-mail to Peters 4.Jan.12}

PEV wants to dredge

PEV wants to dredge its channel and berth at Sydney to 16.5 metres which would accommodate the larger coal boats. The project requires an environmental assessment by the federal government and possibly the provincial government.

The environmental assessment started on Nov. 14, 2011. A notice of commencement was posted on the Canadian Environmental Assessment Registry on Nov. 17 after Transport Canada received a draft project description from the proponent, Provincial Energy Ventures (PEV).

The project scope was since revised and Transport Canada has not yet received a revised project description from PEV,’ wrote Steve Bone, Transport Canada. ‘Transport doesn’t speculate on the duration of environmental assessments and in this case, some project details are currently being finalized by the proponent. {Bone in an email to Peters 5.Jan.12}

Peter Geddes with Nova Scotia Environment said: “We have been made aware of some work they want to do and we are waiting on a project description from them. So we need something official before we can determine if an assessment is required.” {Geddes in discussions with Peters 4.Jan.12}