Formal issue 12#01B  31 January 2012

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

REGIONAL

[No report.]

NEW YORK

CSXT: FreshDirect to move to Harlem River Yard?
NYA: East Side Access does transload relocation. Map
CSXT/NYS: Schumer says CSXT must accept HSR.
NS-PAS: Mechanicville intermodal opens 18 January.
QUÉBEC

[No report.]

CONNECTICUT

PW: Only project cargo for new wood-to-energy plant.
HRRC: CPTC supports passenger service if viable.
MAINE

MMA-NBSR: Madawaska sale closing after 13 March.
Pan Am: Project cargo unlikely from Detroit.*
SLR: MDOT will bid construction for Auburn freight rail.

 MASSACHUSETTS

MC: UTU is organizing the railroad.
ETC v Podgurski: Case dismissed. Podgurski describes progress since John Delli took over.*
ETC v MC: Arguments in Massachusetts case.*
ETC v MC: Michigan case hearing set after 1 March.*
NS-PAS: Global may start ethanol project.

NEW HAMPSHIRE

MBRX/NHDOT: NH attorney general tells MBRX not to operate. MBRX says it has federal obligation.*

RHODE ISLAND

[No report.]

VERMONT

RHODE ISLANDRhode Island: Joe Flynn leaves as rail division chief.
VRS: VAOT to fund the bridge for Omya spur.

MARITIMES

CP/CN: CN hangs onto Canadian Tire intermodal business in eastern Canada.*

Canso: Maher Melford must decide whether to renew option on land. Local optimism.*
Halifax: Any rail traffic from warship contract?*
Sydney: Thrasher says coal project $75 million. Sydney: Ship scrapping has not yet begun.*

RAIL SHIPPERS/RECEIVERS

Cross-reference to companies mentioned here.

PEOPLE, POSITIONS, EVENTS

[No report. See Joe Flynn in Vermont]

FROM THE PUBLISHER

New York news
Please let me know your thoughts on the coverage of New York. We still seek a permanent person to cover the state.

Pan Am v Hardenbergh lawsuit
Still no decision from the Maine judge.

- Chop Hardenbergh

Next issue Valentine's Day

CSXT: BRONX CUSTOMER?

30 January, The Bronx. **FRESHDIRECT MAY MOVE HERE FROM QUEENS TO GET RAIL ACCESS.** At this point the company operates out of a warehouse at 23-30 Borden Avenue Long Island City. The business of delivering fresh vegetables and fruit to residences and offices is booming, and the company wants to expand to other cities.

According to a source close to the company, the Bronx location is FreshDirect's “primary consideration” because of its quick access to highways that connect to New Jersey, Connecticut and Westchester County, the suburban areas to which the company has expanded over the past several years.

Rail access

“FreshDirect is looking into rail,” as a means for its expansion, said Anthony Riccio, senior vice president of Harlem River Yard Ventures, which has a long-term lease on 104 acres of state-owned land, 12.6 acres of which is being offered to the grocer. Harlem River Yards in the Port Morris section of the Bronx is the largest facility served by CSX rail south of Albany [see map].

Rail would give the company outbound access to distant markets such as Chicago and Boston, and inbound access for its raw food.

A Harlem River Yard location also puts Freshdirect close to the massive Hunts Point wholesale food market.

Next step

Marlene Cintron, president of Bronx Overall Economic Development Corporation, said FreshDirect is in final negotiations with the city and state. “We have put together a package that we know they will accept.” {Lisa Fickenscher in *Crain's New York Business* 12.Jan.12}

As of 30 January, the deal was “very close,” she said; “look for an announcement within a week.” {ANR&P discussion}

NYA: A RELOCATION

27 January, Long Island City. **LIRR PLANS TO RELOCATE AN NYA TRANSLOAD HERE,** as part of reshuffling passenger rail yards for the East Side Access project.

East Side Access

This $7.328 billion project will enable LIRR trains to serve a new LIRR terminal under Grand Central Station in Manhattan, easing the pressure on Penn Station and providing commuters who work on the East Side in Manhattan a more direct commute.

Tunnelling, in both Manhattan and Queens, began in 2001; the new bores will connect with an unused tunnel under the East River once intended for the 63rd Street subway line. As of December 2011, the new line will reach 'substantial completion’ in 2016, four years later than scheduled.

Relocation for NYA

On 14 November, LIRR President Helena Williams spoke at the Metro-North/Long Island Railroad Committees meeting. The minutes of that meeting state:

'Since the mid-1990s LIRR has contracted out freight operations to New York & Atlantic Railroad. LIRR is currently moving to a freight strategy that will help streamline freight activity in Long Island City.

'Currently, freight is transloaded at a facility near Arch Street, where the new East Side Access Midday Yard will be located. LIRR is going to relocate the freight yard to the Wheel Spur/Intermodal/Blissville Yard

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1 Thus perhaps fulfilling Isaac Asimov's fantasy, 'The Third Level', a short story about a third level at GCT serving as a portal to the 19th century.
located to the west [sic – should be east, see map] and on the water, which location will be truly intermodal for marine activity.

'The president noted that LIRR has seven bridges that cannot currently carry the weight that is necessary
for current economical freight shipments. By relocating the freight yard to the Wheel Spur area, a yard owned by MTA, LIRR will avoid bridge upgrades that would cost over $100 million. ‘These freight improvements will be funded by NYSDOT, not by LIRR's capital program. LIRR has applied for a grant for the improvements in the Wheel Spur Yard. This will take freight operations out of the ESA area, thereby improving construction opportunities.

‘President Williams noted that the project has gotten a very positive response from [NYA] and from other freight carriers in the region. LIRR will update the Committee as this project progresses.’

Should LIRR continue to contract out freight?
Board member Moerdler asked Williams when management last looked at whether LIRR might do the freight service, and whether that would help LIRRT freight customers. Williams said more freight use occurs than people think, and 'LIRR operates a number of trains on its network jointly with [NYA].' She agreed to provide Moerdler with a briefing on freight, and said she believed the freight network is better served with a private freight operator. {Meeting minutes, LI Committee, 14.Nov.11}

Relocation of NYA activities
As noted by Williams, NYA was involved in the ESA planning and supports the relocation.

Blissville Yard. In 2001 at the time of the Alternatives Study, Blissville was unused. Planners anticipated adding four to six tracks for freight car storage.

Rebuild of High Bridge Yard
The new LIRR facilities at GCT require MNR to relocate the Madison Yard, part of GCT for train storage, to the existing High Bridge Yard in the Bronx. Though High Bridge is not used for freight, the Oak Point Link freight access line passes through it. The Link would move to the west side of the yard, along the Harlem River. {Final Environmental Impact Statement, Chapter Two, Project Alternatives, 2001 (found on MTA website under capital construction)}

Current NYA involvement
Paul Victor, NYA president, wrote on 27 January: 'This is a proposed project that we are well familiar with, however, since there are several ongoing negotiations related to the initiative, NYA is not in a position to comment at this time.'

The relocation
Victor did acknowledge that NYA has a transload off the Arch Street Yard [see map]. It currently serves at least two customers not directly on rail: Healthy Brand Oil at 2116 Jackson Avenue, Long Island City; and New Yung Wah Trading at 465 Morgan Avenue, Brooklyn.

“Transload customers come and go,” Victor noted. The transload at one point, but not now, served City Lumber at 49-47 31st Street in Long Island City. {ANR&P discussion 26.Jan.12}

CSXT/NYSDOT: STILL NO AGREEMENT*
17 January, Bergen, NY. **US SENATOR CHARLES SCHUMER CALLED ON CSXT TO REACH AGREEMENT WITH NEW YORK** so as to permit an upgrade of the 11 tangent miles between Riga and Batavia. The state wants operation above 90 miles per hour on the current alignment, whereas CSXT insists on corridor separated by at least 30 feet for speeds above that [see 10#05B].

Only CSXT of the four Class Is has not signed any of the required federal agreements, Schumer said. Construction of the 11-mile-long track would mean hundreds of local construction jobs. "They're holding up progress.” {Steve Orr in Rochester Democrat and Chronicle 18.Jan.11}
18 January, North Billerica. A PAR BULLETIN ANNOUNCED THE OPENING OF THE NEW INTERMODAL TERMINAL in Mechanicville, as predicted [see 11#12B]. 'Access from CPF-468 [the east] is via east lead track. Access from CPF-470 [the west] is via the Avenue Running Track.'

The Avenue Running Track was also placed in service, running from 'CPF-470 to the "End/begin RT" sign located 2700ft east of CPF-470.' {PAR Supplemental Bulletin Order 1/18/12 Effective 0001Hrs}

[No word on when the sister auto terminal will open.]

Who is operating the intermodal facility?
NS spokesperson Dave Pidgeon declined to answer: 'We don't comment on contractors selected to operate at facilities like the Capital District Intermodal & Automotive Terminal. And an event to mark the project's completion is under consideration.' {e-mail to ANR&P 23.Jan.12}

Equipment and schedule
Norfolk Southern is pleased to announce that our new Albany intermodal terminal, located in Mechanicville, NY, will open at 12:01 am January 16, 2012. The terminal will offer service for containers only (53ft domestic private, EMP, or ocean containers) Schedules for service to and from Chicago-47th St. are unchanged:

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Plainfield, Connecticut. A model of the Plainfield Renewable Energy plant, erroneously showing a train apparently serving the plant. [Also, PW, the railroad which could serve the plant, has no locomotives in Santa Fe livery.] {image from Enova website}
PW: Project Cargo Only*

25 January, Plainfield. **A Proposed Wood-to-Energy Plant Here Will Not Bring In Biomass By Rail.** Ben Easterlin, senior vice-president of operations for the owner Enova Energy Group of Atlanta, noted that PW main line to Groton lies adjacent to the site at 915 Norwich Road. Indeed, the image on the Enova website shows a train [see box].

However, the biomass, primarily construction and demolition debris, “will arrive by truck. It's just a coincidence that rail line is there.” The image was put together by the engineers who probably liked adding a model of a train.

He surmised that the previous developer may have contemplated rail. [Enova bought 80% of the project from Decker Energy earlier this year; NuPower retained 20%. \{Power Finance and Risk 18.July.11\} A Decker Energy presentation shows a siding off PW into the plant. \{Daniel Donovan 5.May.09\}]

Easterlin did note that the existence of the plant will reduce railing of waste to Ohio. “We're pulling in stuff that would go into landfills” either in New England or elsewhere.

More on the plant

According to a press release on 9 January, 'Science Applications International Corporation (SAIC) and the Carlyle Energy Mezzanine Opportunities Group (Carlyle) today announced an agreement to provide financing for construction of the $225 million Plainfield Renewable Energy (PRE) biomass project.

'SAIC will also provide engineering, procurement, and construction services for the project under a fixed-price, date certain contract. The PRE project is owned by a subsidiary of Enova Energy Group and located on a 27-acre site [here]. The plant will employ Best Available Control Technology (BACT) to control emissions and is fully certified as a renewable power source in the State of Connecticut. The project will create 400 jobs – 300 during the two-years of construction and 100 direct and indirect permanent positions.

The PRE project will generate 37.5 megawatts (net) of clean energy to power the equivalent of 37,000 homes. The project will consume wood readily available from various sources such as construction and demolition (C&D) debris, recycled wood pallets, and land clearing materials. Connecticut Light & Power will purchase power from the plant based on a 15-year off-take agreement, utilizing the plant’s status as a renewable power source. The PRE project has all necessary permits to construct the facility and anticipates completion in December 2013.' \{text of press release\}

Favorable rail location, but no biomass delivery

PW spokesperson Marie Angelini wrote on 13 January, and Easterlin concurred: 'P&W will be handling moves of dimensional loads, turbines and generators.' \{e-mail to ANR&P\}

HRRC: Proposed Passenger Service*

30 December. **The Connecticut Public Transportation Commission Said ConnDOT Should Assist the Service** if 'the proposal ultimately appear[s] to be operationally feasible and fiscally viable...in any manner that [ConnDOT] can.'

This Recommendation appeared as one of eight (the only one related to freight rail) in the Commission’s Annual Report for 2011 [see 11#01A for 2010 report]. Through the 2006 Report, ConnDOT was required to respond to the recommendations. Since that legislative requirement was removed, the department has not seen fit to respond to the Public Commission [see 09#06B].

Status of the HRRC effort

According to the Report, the Commission’s 4 May public hearing in New Milford heard from local residents and HRRC officials about the project [see 10#06A]. Colin Pease, HRRC vice-president special projects, told
the meeting that though the service would not require an operating subsidy, it had start-up costs of $200 million for track upgrades, station, and rolling stock. President John Hanlon estimated a fare structure of less than 30 cents per passenger mile. {text of CPTC Report}

Benefits
In a study released in September 2011, Steven Sheppard of Williams College listed benefits:

- Increased total economic output in the region. The increase during the first decade of the project would total in excess of $625 million dollars additional goods and services produced and sold in the region.

- This increase in economic activity in the region would bring an average of 610 new jobs to the region (with a maximum of 733 jobs during the initial construction and upgrade of the railroad).

- The increase in economic activity in the region would provide Connecticut and Massachusetts state governments, and local governments in the region with nearly $29.5 million in additional tax revenues during the first decade of the project.

- During the first decade the affected region would provide the federal government with an additional $55 million in tax revenues. {text of study from Pease}

MAINE

MMA/NBSR: MARCH DATE*
12 January, DC. **NBSR SUBSIDIARY EMRY ANNOUNCED IT WOULD TAKE OVER THE MADAWASKA LINE** 'on or after March 13, 2010.' This appeared in a notice required to go to railroad labor unions, and filed with the STB this day.

MMA agreed in December to sell the line from Madawaska to St.Leonard to NBSR [see 11#12A], but no date for closing was provided. {STB Finance Docket No.35588}

PAN AM: POSSIBLE CUSTOMER?*
13 January, Detroit. **NEITHER RAIL NOR BARGE SEEMS TO MAKE SENSE FOR PROJECT MOVES** from Somatex, an overhead-crane supply and repair facility here. Jason Amara, the service scheduler, said his company does a considerable amount of work for the US Navy in Newport, Rhode Island. For example, he recently looked at trucking a 220-foot long unit to load on a barge to General Dynamics, which became “a logistical nightmare” trying to offload the unit upon arrival. If Somatex do that, it could outfit the crane in Detroit, saving the effort of getting people on-site to do it in Rhode Island. But the time involved, and the cost of barging at $150,000 to $200,000, made trucking the preferred option.

What about rail? “The units are too long,” Amara said. “Rail has never been an option; it does not make sense,” though a Pan Am rail line lies less than a mile from the company facility. {ANR&P discussion; Somatex website}

Rail difficulties
Jeremy Young of Progressive Rail Specialized Logistics whose office is in Freeport, Maine, agrees. “Pieces of this length become virtually impossible to clear by rail due to the swing out in curves. Also, they can only be moved in a bolstered load configuration with multiple idlers. Bolstered loads often equate to expensive special train charges in addition to the regular freight rate. However, if the pieces can be shipped in sections and further assembled at job site, then rail becomes a viable alternative.” {e-mail to ANR&P 26.Jan.12}

New contract
On 10 January, Somatex Inc. received a $983,250 federal contract one-year contract with a two-year option from the U.S Naval Facilities Engineering Command. Somatex will maintain, repair, and inspect overhead crane and hoist-lifting equipment for the Naval Undersea Warfare Center in Newport. “This is a good
contract,” said Somatex President John Stuart. “We’ve had a good relationship [with the Newport center]. We’ve been working at this particular facility for seven years.” {Alex Barber in Bangor Daily News 10.Jan.12}

**SLR: CONSTRUCTION IN AUBURN***

26 January, Augusta. **MDOT WILL BID OUT RAIL WORK IN AUBURN** funded by the June 2010 bond issue. The bond language: '5,000,000 to purchase a portion of rail line and to make other improvements related to improved freight rail service and preparation for future passenger rail service to Lewiston and Auburn.' [See 10#04A, passage of bill 10#06A.]

**How the money is spent**

Nate Moulton, MDOT rail honcho, explained that $3 million remains after MDOT spent $2 million to buy the SLR line from Yarmouth Junction to Auburn [see 10#10B]. The 2012 project has two parts:

- 'reconnect and rebuild the old branch line behind the intermodal facility' [a long-standing plan to rebuild part of the former Portland and Rumford Falls Railway – see 10#03A] where Commercial Paving lies and there is significant additional land for economic development for freight.

- 'improve SLR’s switching yards to move some of their switching operations and storage away from the area around the main line and Auburn airport.'

He believed that the Lewiston Auburn Railroad [the municipally-owned entity which leases the line from Lewiston Junction to end of track to the SLR – editor] 'will own the new line, SLR would operate, SLR would own their yard improvements.'

**Project management**

Moulton said the department would bid out the project in early March, and that Jeff Tweedie would manage it. Tweedie has the title of assistant director of, but is currently acting director of, Multimodal Project Development. Prior director Norm Baker retired. {e-mail to ANR&P}

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**MASSACHUSETTS**

**MC: ORGANIZING**

26 January, Framingham. **THE UTU IS “IN THE PROCESS” OF ORGANIZING THE RAILROAD**, said George Casey, the general secretary here. The effort started after the change in leadership. Casey declined to say more, except, “It's about time.” {ANR&P discussion}

**ETC CAPITAL v PODGURSKIs: DISMISSED***

19 January, Dedham. **JUDGE RAYMOND VEARY DECIDED TO GRANT THE PODGURSKIS' MOTION TO DISMISS**, two days after a hearing on 17 January in which the Podgurskis and Reardon argued that the ETC case [see 12#01A] failed to state a case for which relief could be granted. The docket entry does not indicate that Veary wrote an opinion. {text of docket entry}

**Podgurski response**

Chris Podgurski wrote: 'Cape Rail Inc is very pleased with the outcome as the case had no merit, and stood on no foundation whatsoever.

'Going forward, Cape Rail Inc and its subsidiary Companies have been "batting cleanup" from three years of past management dysfunction. Frankly, it has been an uphill battle to get to this point. Together, John Kennedy and Dan Wahle along with Alfred Michon misguided this Company and essentially self-dealt their way into a situation that completely disregarded our corporate obligations at all levels. Additionally, there was
no regard for Chris and Lori Podgurski or Andrew Reardon's investment into Cape Rail Inc from the beginning.

'Coupling the economic climate with the above-mentioned facts, it has been an 11th hour "showdown" to right the ship. I am frankly excited at the synergies that have developed between the various railroad elements of the First Colony Group, namely Edaville RR and the Grafton & Upton sales and marketing branch. We have established a foothold in the South Coast Region and have been meeting regularly with city officials and the Commonwealth for potentials in the ports of New Bedford and Fall River.

'Cape Rail Inc thru its subsidiary Precision Rail now offers complete AAR Railcar Inspection and Repair, Locomotive Repair, Derailment Services, and Track repair to Railroads and Industry in the Northeast Region.'

Traffic up

'Our carload business is up from 4900 in 2010 to just under 6000 in 2011. I think that speaks for itself. We have been committed to the customers to provide regular-dependable service and I would challenge anyone that speaks to the contrary. That, my friend, is the bottom line. We continue to concentrate on the “core elements” by controlling expenses, and aggressively pursuing any and all business opportunities.

'Our partner CSX has stepped up to the plate to allow us to offer very competitive pricing on new business.'

'We did move more carloads of salt to Gallo during 2011 than the previous year. However, the increases have also been on paper to Quad Graphics, increased OSB and plywood to One Tree (formerly Weyerhaeuser), new flour move to Gold Medal Bakery [see 11#12A], a record amount of frozen fish from the West coast into New Bedford, as well as Sid Wainer [in New Bedford] bringing in potatoes, onions, and citrus products.'

Also, wrote Podgurski, 'the financial conditions and excessive administrative overhead that existed prior to September has been virtually eliminated.' {e-mail to ANR&P 19.Jan.12}

ETC v MC: ARGUMENTS*

19 January, Dedham. SOME OF THE ARGUMENTS EACH SIDE PUT FORTH in the Massachusetts case were listed in the Memorandum of Law by the Podgurskis and Reardon (the Defendants) dated 22 November, and ETC's responses in their 2 December Memorandum in Opposition. [Judge Veary dismissed the case – see other article.]

Defer to the Michigan court?

Defendants noted the existence of the Michigan case [see below], which predated the Massachusetts filing, and the fact that the law of Michigan will be applied in both cases [presumably because of language in the Letter of Intent (LOI)]. The doctrine of judicial comity should apply, wherein Massachusetts courts would defer to Michigan courts.

ETC replied that comity referred only to foreign judgements, and not those of other American states.

Need ETC register with the Commonwealth?

Massachusetts law requires 'every foreign limited liability company doing business in the Commonwealth' to register. Until it does, 'no action shall be maintained or recovery had by the foreign limited liability company.' ETC Capital LLC is located in Michigan.

ETC replied that it is not doing business in Massachusetts and quoted the Massachusetts statute that conducting an isolated transaction does not constitute doing business.

Should Cape Rail be a party?

The LOI is addressed only to Cape Rail and therefore Cape Rail should be a party, Defendants argued. In the Michigan case, ETC argues that Cape Rail is the entity which 'breached the LOI'.

ETC replied that Cape Rail is not an indispensable party, and that if it is, the court can require it to be joined.
Is all or part of the LOI a binding agreement?

Defendants noted Paragraph 9 of the LOI states that the LOI is 'not intended to, and [does] not create any legally binding obligation of the Seller and Buyer'. ETC replied that the combination of the LOI and the shareholder vote to proceed does create a binding agreement as to the exclusivity clause and the confidentiality clause. 'While Defendants may consider this a novel theory of relief, that is not a basis for dismissal of the Complaint.'

As for an implied covenant of good faith and fair dealing [the covenant which Peter Leishman claims Pan Am violated – see 11#12B], Michigan law does not recognize it as a separate cause of action, said the Defendants. ETC cited Michigan cases to the contrary.

The two sides also disagreed on whether Defendant's action breached Massachusetts chapter 93A (unfair practices), or constituted tortious interference or civil conspiracy.

The decision

The judge apparently did not supply reasons for his dismissal.

ETC v MC: THE OTHER COURT CASE*

20 January, Detroit. A MICHIGAN COURT WILL HEAR ANOTHER MOTION TO DISMISS, BY CAPE RAIL, of a lawsuit filed against Cape Rail, the Podgurskis, and Andrew Reardon by ETC Capital. In its similar case in Massachusetts, ETC filed only against the individual shareholders [see other article]. The court will set a date for the hearing after 1 March. {pleadings from the Circuit Court for the County of Oakland, case
PAN AM: FIRST CARLOAD

25 January, Winchester. **THE TIGHE WAREHOUSE HERE RECEIVED A CARLOAD**, apparently the first following the work on the track [see 11#12B]. {New England Railroad photo archive, entry by Wayne Johnson} John Tighe, head of the company, could not be reached for comment by deadline.

Official opening

'New Hampshire Route Mainline
Hand operated switch equipped with electric unlock at MP9.1 No.2 Track returned to service providing access to Montvale Yard [Tighe Warehouse].' {MBCR Bulletin Order No.9-53 Effective 1/30/12}

NS-PAS: ETHANOL?

30 January, Revere. **COULD THE LONG-AWAITED TRACK WORK IN REVERE BEGIN SOON?** Global Partners has taken steps toward delivering ethanol by rail to its terminal here [see 11#11B], but has declined to state when or even whether it might happen.

A possible indication came from the MBCR Bulletin of this date which stated:

'Eastern Route Mainline
Hand-operated switch equipped with electric unlock at MP6.5 No.1 Track returned to service providing access to the East Boston Branch.'

{MBCR Bulletin Order No.9-53 Effective 1/30/12}

[The East Boston Branch runs past the Global Terminal in Revere. Editor]

What about the loss of the ethanol subsidy?

One wonders whether the end of the tax subsidy for ethanol production, and the end of the tariff on imported ethanol, might affect this project. After three decades, both expired at the end of 2011.

Dean Taylor, former president of the Iowa Corn Growers Association, said in December: "[The loss of the credit] will reduce the project margin for a lot of people in the ethanol business. It won't be fatal as long as demand for ethanol and gasoline remains strong."

The requirement to use increasing amounts of ethanol in gasoline remains. {Robert Pear in New York Times 2.Jan.12}

NEW HAMPSHIRE

MBRX/NHDOT: A NEW BATTLEFRONT**

10 January, Concord. **NEW HAMPSHIRE ATTORNEY GENERAL MICHAEL DELANEY SAID THE STATE WOULD BID OUT THE OPERATION OF THE STATE-OWNED TRACK** now operated by MBRX. In a letter to Peter Leishman's attorney, Craig Donais, Delaney wrote:

- The operating agreement between MBRX and NHDOT 'terminated pursuant to its own terms on December 31 2010 due to MBRX's inability to operate for at least 60 days during the 2010 season.'

- Renewing the operating agreement was moot because MBRX was insisting it could not operate profitably without Leishman, barred from operating due to Pan Am's lifetime ban.
Without notice to NHDOT\(^2\), MBRX resumed operating on 26 September 2011 using a different conductor. It made 28 round trips, and informed NHDOT that it ceased operations for 2011 on 1 December. NHDOT refused the fees, which would have totalled $1190.

NHDOT did not 'seek to terminate MBRX's federal operating rights by application to the [STB], because that adversarial process, typically taking six to twelve months, would not have been completed prior to MBRX's seasonal December shut down.'

MBRX 'holds a common carrier obligation on the State-owned portion...and its accompanying federal rights, which technically enabled MBRX to operate in the absence of a State operating agreement.'

In order for state-approved rail service on the line, 'the State must grant such operating rights to railroads that hold federal operating rights or that can demonstrate an ability to obtain such rights, either from the STB or by contract from a current holder of federal operating rights. For example, MBRX has contractually authorized Pan Am to operate on the State-owned portion, based on MBRX's federal rights.'

Since spring 2010 the state has balanced many factors: revenue from the line, the need of Granite State Concrete (GSC) for rail service, GSC's preference to deal with MBRX and not conduct business with Pan Am [In April 2010 GSC begged the state to take action – it did not. See 10#05A], the lifetime ban, the resulting inactivity, and the litigation. The state 'neither sought to terminate MBRX's federal operating rights or to grant State operating rights to another railroad.' [Nor did it do anything to try to resolve the tempest in a teacup creating by banning Leishman. Editor]

'Pan Am may choose not to continue the arrangement that permitted service to resume as it had in the Fall.'

The State does not believe that re-entering an operating agreement with MBRX, merely to regain contractual entitlement to insurance indemnification and modest revenue, is in the best long-term interest of the State.'

Will put the line out to bid

'...Accordingly, DOT intends to solicit interest in operation on the Rail Line from all qualified railroads. By doing so, DOT seeks to ensure stable long-term service to Granite State Concrete by taking current stock of all the complex variables of this situation, to include identifying any interested rail carriers.' It hopes to do so by the beginning of the 2012 operating season.

Warning to MBRX

'I must clearly state that MBRX does not have the State's permission or authority to operate on the State-owned portion...' \{text of letter\}

12 January, Manchester. MBRX TOOK ISSUE WITH THE ATTORNEY GENERAL'S REASONING, in a response to the 10 January letter. Counsel Craig Donais wrote that the State's position was created not by MBRX but by NHDOT's 'decision to terminate, rather than alter, amend, or waive a provision within the Operating Agreement...'

Donais then listed 'five key flaws':

Trackage rights. It is 'inconceivable that PAR would provide rights to another railroad to operate on its own track in any sort of competitive environment to provide service to GSC.' So only MBRX or PAR could provide service.

PAR rates. PAR offered to provide personnel to MBRX for $900 per day so that MBRX could operate without
Leishman. If this rate accurately reflects PAR's operating cost, then PAR 'cannot economically provide rail service to GSC.'

**Mine safety certification.** PAR employees do not have the certification to enter GSC facilities. GSC has concerns about service by any new carrier with no track record of operating within Mine Safety and Health Administration zones.

**STB approvals.** Any new railroad, unless it is given rights now held by PAR or MBRX, must obtain STB approval.

**Pan Am as potential successor.** 'MBRX has significant concerns that its legal rights as operator on the Hillsboro Branch have been impacted by PAR's actions commencing in 2009, first by challenging the re-issuance of the Operating Agreement to MBRX, the legislative ethics complaints, and its actions following the October 22, 2009 accident.

'Any further action by the State to terminate MBRX's operating rights will necessarily result in only MBRX and PAR competing for the operating agreement, with only MBRX currently possessing the knowledge and experience to provide service to Granite State at an economically viable rate.

'We believe that as PAR is the only potentially viable successor, any award to PAR would create significant liabilities for the State by interfering in the existing agreement, commencing with the Department's actions in 2010.'

**MBRX will continue to operate**

'Given the existing STB approvals and common carrier obligations currently held by MBRX on the Hillsboro Branch, MBRX will continue to provide service to Granite State Concrete until that obligation is removed.

'The current state of affairs with the State – no existing operating agreement – is no different than with PAR. In both cases, MBRX had operating rights that have either expired (PAR) or have been terminated (the State) but there is no operating agreement addressing rates, insurance, etc, in place. In PAR's case, this situation has existed for over half a decade.'

**State must put up barriers**

'If the State is affirmatively directing MBRX to cease provision of service to Granite State Concrete... despite... GSC's desire for service...I would request that the State issue a formal cease and desist order, install physical barriers to prevent entry onto the State-owned corridor, or other affirmative steps beyond the terms outlined in your January 10 2012 letter.

'MBRX has affirmative rights and obligations approved by the STB, and MBRX intends to fulfill those obligations unless affirmatively stopped. With these affirmative steps, we anticipate quick action before the STB to conclusively resolve MBRX's operating rights to provide service to Granite State Concrete.'

**Offering to meet**

Donais concluded his letter by offering to meet, along with representatives of GSC and Monadnock Paper.

As of 27 January, Leishman had received no response about the offer to meet. 

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**VERMONT**

**VAOT: ADIOS, AMIGO**

18 January, Montpelier. **JOE FLYNN WILL NOT RETURN AS RAIL DIRECTOR.** He stepped down to handle emergency management after the floods of the past summer. This day he was announced as the next director of Vermont Emergency Management. (Department of Public Safety press release)
Who is next?

In 2002, Charlie Miller took over the division, but left in 2006 to handle special projects. In 2008 Robert Ide became rail program manager, and left in 2009 to become commissioner of Motor Vehicles. Flynn then came on board.

Trini Brassard, assistant director of VAOT's Policy, Planning and Intermodal Division, wrote: 'We are still hoping Joe decides he made a mistake and comes back! Currently Daniel Delabruere is the acting rail director. Dan is also still the manager of our property management group for which manages the rail, aviation and highway property owned by the State of Vermont. This group is actually in our Rail Section since we are just beginning the consolidation efforts to add highway property into them. Dan has 25 years of construction experience also which has proven to be a huge asset for us. As for a permanent replacement we will be looking for one, I am just not sure timelines have been developed yet.' {e-mail to ANR&P 23.Jan.12}

VRS: MORE ON OMYA SPUR*

23 January, Montpelier. 'VTRANS IS STILL COMMITTED TO CONSTRUCTING OR FINANCING THE CONSTRUCTION OF THE BRIDGE ON ROUTE 7 up to a maximum of $8 million,' as part of the Middlebury spur project, wrote Brassard [see above].

'There are no estimates at this time as we will just be starting on preliminary design this coming year so we are ready once the schedule for the balance of the spur is completed [see 12#01A].

'It is important to note that this is not a spur for Omya....Omya will be one of multiple users. There are other interested parties that are not as committed but may be interested in its use once it is done.' {e-mail to ANR&P 23.Jan.12}

MARITIMES

CP/CN: CANADIAN TIRE*

19 January, Calgary. THE AGREEMENT BETWEEN CP AND CANADIAN TIRE DOES NOT APPLY EAST OF QUÉBEC. On this day CP announced an agreement with Canadian Tire which extends to early 2017 and awards the railway with the vast majority of Canadian Tire’s domestic container traffic.

“We’re delighted to renew our longstanding partnership with CP,” said Pat Sinnott, Executive Vice-President, Supply Chain and Technology, Canadian Tire Corporation. “We rely on rail extensively to get our goods to market. Rail is the most efficient and sustainable way to move our products and CP is a trusted partner that will enable us to continue to deliver products reliably to over 1,700 Canadian Tire, Mark’s and FGL Sports retail locations across the country.” {CP website}

Eastern Canada

'Canadian Tire currently has a contract with CN for all intermodal traffic east of Quebec,' wrote Canadian Tire spokesperson Sarah Van Lange. [See 11#07B for warehouse in Montreal.]

[Alternatively, Canadian Tire might have made a deal with MMA and NBSR to handle the traffic at Saint John, as an alternative to CN. Editor]

Correction to 2010 account

In April 2010 Neil McKenna, vice-president transportation for Canadian Tire, said his company brings approximately 10,000 TEUs a year through Halifax. At nearby Burnside Industrial Park, Consolidated FastFrate strips the import containers and stuffs 53-foot domestic containers. Canadian Tire then trucks the domestic containers to its tire stores and warehouses throughout Eastern Canada. It does not use rail because too many locations don’t have rail. [See 10#04B.]

Van Lange corrected this account: 'We do indeed use rail in eastern Canada.' {e-mails to ANR&P 25 & 26.Jan.12}
CANSO: RENEWING THE OPTION TO PURCHASE*

18 January, Melford. ALL SIGNS ARE STILL POSITIVE FOR THE CONTAINER TERMINAL HERE, said Barry Carroll, Guysborough chief administrative officer. “We get lots of visitation associated with that development and have lots of interaction with others on the development so all signs are positive. It is not something that comes together in a year, it takes time to put together.”

Maher Melford Terminal’s option to buy 315 acres of land from the Municipality for the District of Guysborough expires late this year. Carroll said negotiations won’t start until later this year, and the municipal council will decide whether to grant an extension. {discussion with ANR&P correspondent Tom Peters 18.Jan.12}

Maher Melford responds

Maher Melford Terminal Vice-president Richie Mann said of the option renewal: “Again, we will finalize land purchase when construction is set to begin. Remember, this is not a Field of Dreams project. So, in order to protect the buyer and seller, there can be no speculation, so when the various components necessary for a construction start are completed, money will change hands.

Mann hoped for announcements this year. “There are a number of things that must happen in order for the project to proceed. Many are in place. A few remain. We are optimistic but can’t provide a firm date for construction start at this time.”

Local marine community rumor says Maher Melford is seeking MSC as a major carrier. Mann had little to say. “As much as I would like to tell you of the positive response from industry, we have refrained, from the beginning, about divulging who we are dealing with,” he said. {Mann e-mail to Peters 9.Jan.12}

MSC’s Norman Tam in Montreal had a “no comment” in response to a Maher Melford connection. {Tam discussion with Peters 16.Jan.12}

The plan

Maher Melford plans to build a 315-acre container terminal and intermodal rail facility plus a major logistics park at the Strait. [See 10#07A.] In 2010 Maher Melford secured an option to purchase approximately 1250 acres of Melford industrial reserve land from the provincial government, adjacent to the waterfront site. {Tom Peters in Canadian Sailings 12.April.10}

HALIFAX: MONEY COMING*

12 January. IRVING SHIPBUILDING AND OTTAWA AGREED IN PRINCIPLE ON THE CONSTRUCTION OF CANADA’S COMBAT FLEET under the National Shipbuilding Procurement Strategy (NSPS), Prime Minister Stephen Harper said in Halifax. The umbrella agreement allows the two sides to begin negotiations on individual ship contracts. In October, Irving won the $25 billion contract to build six Arctic Offshore Patrol Ships and 15 Navy surface combat ships over thirty years

Seaspan Marine in Vancouver was awarded an $8 billion contract to build seven non-combat surface vessels. {Federal government releases 12.Jan.12}

The pact is expected to create 11,500 direct jobs for the East coast over three decades. {Selena Ross in Chronicle Herald 13.Jan.12}

Rail opportunities?

The project will also create a number of transportation jobs but whether or not there will be new business for CN is yet to be determined. {CN spokesperson Julie Senecal email to ANR&P correspondent Tom Peters 13.Jan. 12}

SYDNEY: MORE ON COAL

25 January. PROVINCIAL ENERGY VENTURES PRESIDENT ERNIE THRASHER SPOKE TO A BUSINESS AUDIENCE at the Economic Development Forum at the Membertou Trade and Convention Centre here. He described the coal transload project and announced his company will be spending $75 million
to upgrade the pier. {Chris Shannon in Cape Breton Post 26.Jan.12}

Other steps remain
Thrasher still [see 12#01A] needs the green light from the federal and provincial environment departments and a renewal of the lease for the pier.

SYDNEY: NO SHIP SCRAPPING YET*

Elliott wanted to start his business by dismantling two Marine Atlantic ferries, MV *Caribou* and MV *Joseph and Clara Smallwood*, at the park owned by Laurentian Energy. However, Marine Atlantic sold the two ships, replaced by newer vessels, for scrap to Indian interests for a total of $7.675 million. {Cape Breton Post 2.Nov.11}

Opportunity missed
“We were disappointed over the ferries. That would have been a perfect start and could have been two years work leading into some government work we believe is coming in 2015 and onward,” Elliott said. The recently-announced Irving shipbuilding program [see other article] should result in scrapping replaced ships.

“The issue for sometime has been getting sufficient work in taking us to that point and the ferries were a real encouragement. But we didn’t make a bid on them. We tried to meet with Marine Atlantic before any bid launches and we did make an informal bid but it was nowhere near the money Marine Atlantic realized in the end. So when those ships went to India it took a two-year work plan out from under us.”

Other possible work
Elliott saw “a couple of other pieces of business pending but there has been no agreement with the owners of the vessels.” The company has been getting inquiries to cut up a number of fishing vessels but Elliott isn’t jumping at the work. He said the amount of scrap metal produced would hardly be enough to cover the costs of dismantling those smaller vessels.

Transporting scrap
If and when the recycling facility is up and running, the final scrap metal produced would be moved by ship; Elliott said rail would be too expensive. The closest markets would be Ontario and Quebec “and we could barge to customers on the U.S. East coast. The best scenario is probably to accumulate material and not to load whole ships because that would take two years production but rather to be a top-off cargo of 4,000 to 7000 or 8000 tonnes when one of these vessels leaves the Seaway system with their Seaway draft and then top off cargo for full ocean draft.” {discussions with ANR&P correspondent Tom Peters 12.Jan.12}

Laurentian comment
“We have the skilled labour and willingness to expand into a new industry and develop that here,” said Laurentian Energy CEO Denis Lanoe. “There isn’t really an established ship recycling location on the East coast of Canada.” He said the new facility could create up to 50 new jobs. {CBC 4.Nov.11}

**RAIL CUSTOMERS**

Described in this issue.
Canadian Tire (CN, Nova Scotia) CN serves intermodally.
Fresh Direct (CSXT, New York) Considering Bronx location.
Global Partners (ST, Massachusetts) Rail to Revere?
Healthy Brand Oil (NYA, New York) Served at transload.
New Yung Wah (NYA, New York) Served at transload.
NS intermodal (PAS, New York) Mechanicville opens.
Omya (VRS, Vermont) New spur awaits design, funding.
Plainfield Renewable (PW, Connecticut) Project cargo only.
Somatex (ST, Maine) Project cargo too big for rail, barge?
Tighe (ST, Massachusetts) First carload.