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

Formal issue 13#06B 3 July 2013

*Article unchanged from e-bulletin.
*Blue type in article: changes from e-bulletin.

Blue header & table of contents: new article

REGIONAL

Crude: Inbound spotted on all three rail lines to Saint John.**

NEW YORK

[No report.]

QUÉBEC

[No report.]

CONNECTICUT

HRRC-Pan Am: Either freight-only line in Connecticut may get passenger service.*

New London: Does the port need mixed-double or full double-stack rail clearance?*

New London: No new RFP until late 2014.*

MAINE

MMA: Closed mill faces tax lien.*

 MASSACHUSETTS

NS-Pan Am: Global withdraws ethanol rail plan.

Pan Am: Customer Tighe warehouse in Wilmington/Woburn ordered to cease using the rail.*

Pan Am: Requests emergency STB action.

Pan Am: Failure of hydrant led to loss?*

Pan Am: Failure to clean up ties leads to fine.*

NEW HAMPSHIRE

CCRR: Rymes expanding propane facility.

MBRX: Sole customer not yet open for the season.*

RHODE ISLAND

[No report.]

VRS: OMYA to build rail to existing quarry.

VRS: Proposed propane facility near Bellows Falls.*

VERMONT

MARITIMES

CN-Halifax: Imperial will close its refinery.*

NBSR-Eastport-Saint John: Woodland Pulp is now using rail to move some of its production to Saint John for export.**

RAIL SHIPPERS/RECEIVERS

A cross-reference to companies mentioned here.

PEOPLE, POSITIONS, EVENTS

MERR management changes.

EDITORIAL

A voluntary Code of Best Practices for Siting and Operating Rail Freight Facilities can resolve future NIMBY-railroad disputes.

FROM THE PUBLISHER

Transport app coming!

The net says that Apple has an app whereby all products will be reduced to files for delivery by e-mail. NIMBYs will have nothing to complain about, as no one need 'build anything anywhere near anyone.'

- Chop Hardenbergh Next formal issue 19 July.

REGIONAL

CRUDE**

Sightings
In June after the 14th (as always, this list, compiled from rail observer sightings, does not contain every oil train that moved, and may list one train more than once):

Pan Am crude trains
20 June, Mattawamkeag, 30 cars handed to NBSR.
27 June, Portland, string of empties westbound. {NERail photo archive}

Crude CN
22 June, 406 east from Saint John, about 30 apparently crude cars in two cuts.
29 June, 406 mixed train with four locos west to Saint John at Hampton, 34 Procor tanks and two cuts, 14 and 26 of other tank cars. {RailsNB videos}

Crude NBSR
21 June Irving terminal filled.
22 June Irving terminal empty by 13H00.
22 June loaded eastbound #1 at Harvey Station, 56 tank cars of total 67.
22 June loaded eastbound #2.
24 June cut of 35 tank cars in 110-car train, led by four locos (three HCLX).
26 June eastbound departed McAdam. Four locos (three HLCX) lifted 17 cars in McAdam and added them to the rear; head end had a spacer car and 45 oil tanks; 97 cars all together.
27 June loaded eastbound oil train.
28 June eastbound away from McAdam, arrived from Maine with 35 crude oil tanks, lifted another 7 tanks in McAdam, 4 locos.
30 June loaded 59-tank train eastbound through Welsford, three locos.
1 July eastbound 78-car oil train departed McAdam with six locos (4 HLCX, 2 NBSR)
2 July eastbound 70-car mixed train with 40 crude oil tanks, 3 locos. {RailsNB}

CONNECTICUT

NEW LONDON RAIL IMPEDIMENTS*
4 June, New London. DOES NEW LONDON NEED DOUBLESTACK CLEARANCE ON THE NECR OR PW? One knowledgeable source recently asked ConnDOT and NECR/GWI officials whether the funding to improve weight capacity to 286,000 pounds and repair the Norwich tunnel [see 13#05B] should have also aimed at improving clearances. The officials replied that funds would not cover that. {e-mail to ANR&P 5.June.13}

What clearance constraints exist?
NECR has mixed doublestack/trilevel autorack clearance (19'6'') from the Canadian border to Willimantic. A 2011 study listed four constraints to that traffic south of Willimantic, and three other constraints to full doublestack (two domestic containers, 20'6'') [see box].

The Norwich tunnel
Of the seven constraints listed, the description 'Norwich tunnel' appears the most daunting. However, an aerial
view [q.v.] shows it as formed by a dirt-covered culvert with a road, Lafayette Street, crossing. [Replacing this with a normal bridge should not prove that much more expensive than improving the other clearance impediments with new bridges or undercutting. Editor]

**Does a need exist for mixed doubles? Mini-editorial**

The Malone & MacBroom study claims: 'Ultimately, addressing all seven of these clearance impediments would greatly expand opportunities for the State Pier Facility to distribute goods arriving at the Facility throughout New England.'

Frankly, this contention is nonsense. It rests on two unsupported pillars: that New London can attract either direct or feeder calls of container-carrying vessels, and that the distribution/gathering of these containers will occur via rail.

**Attracting container calls.** New England, and Connecticut in particular, has not only sought to attract container traffic to their ports, especially by feeder, over the past two decades, but has seen several services come and go calling Portland, Boston, and New York. Despite the apparent advantage of taking truck traffic off I-95, nothing has worked for long. I see no change in market or technology which will change that, though I wish Maine's articulated tug-barge the best [see 13#05B].

New England already has a service carrying containers to/from its heart to New York: the CSXT/PW 'Stackbridge' service in Worcester. This, I believe, provides transit time as quick as a feeder service to New London + NECR rail would.

**Utilizing rail.** The distance between New London and population centers of New England is too short to justify two additional lifts of containers (on and off a rail car). A truck move up I-395 is far easier.

For this reason, Connecticut has no intermodal terminal; the distance between the CSXT West Springfield and Worcester terminals is too short to justify a terminal in Connecticut.

**Competing ports.** Finally, spending our infrastructure funds to spread out already thin sea-borne container traffic for New England only weakens the entire network. I would like to see the entire small-port group in New England rationalize their particular niches.

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1 A 2012 study covering Bridgeport, New Haven, and New London addressed the traffic question. It suggested examining container moves and other traffic, but not spending infrastructure money immediately. See 12#11A.
2011 NEEDS AND DEFICIENCIES OF NEW LONDON

New London State Pier Facility and New England Rail Connectivity

[T]he New England Central Railroad (NECR) line accesses the New London State Pier property. The NECR operates 394 miles of railroad between the Quebec/Vermont border and the State Pier Facility....The NECR has 19’6” clearance capacity from Willimantic, CT north to the Canadian border....In order to carry double-stacked domestic containers, a clearance of 20’6” is needed. The NECR intends to achieve this clearance on its line north of Willimantic as demand warrants it.

Willimantic is roughly 30 miles north of the State Pier Facility along the NECR. Four significant impediments preclude double-stack capacity of mixed steamship and domestic containers in this short stretch between New London and Willimantic. These impediments are shown in the following table.*

<table>
<thead>
<tr>
<th>Milepost (from Union Station)</th>
<th>Current Clearance</th>
<th>Type</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.28</td>
<td>19’5”</td>
<td>Overhead</td>
<td>U.S. Coast Guard access road</td>
<td>New London</td>
</tr>
<tr>
<td>14.15</td>
<td>19’4”</td>
<td>Tunnel</td>
<td>Lafayette St.</td>
<td>Norwich</td>
</tr>
<tr>
<td>14.77</td>
<td>19’2”</td>
<td>Overhead</td>
<td>State Rts. 3 &amp; 32</td>
<td>Norwich</td>
</tr>
<tr>
<td>16.47</td>
<td>19’4”</td>
<td>Overhead</td>
<td>State Rts. 642/W. Town Rd.</td>
<td>Yantic/Norwich</td>
</tr>
</tbody>
</table>

In addition, there are three other bridges in the stretch of rail line between New London and Willimantic that do not meet the clearance standards for double-stack domestic containers (20’6”). These impediments are described in the following table.

<table>
<thead>
<tr>
<th>Milepost (from Union Station)</th>
<th>Current Clearance</th>
<th>Type</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>.65</td>
<td>19’10”</td>
<td>Overhead</td>
<td>State Pier Road &amp; Amtrak</td>
<td>New London</td>
</tr>
<tr>
<td>16.80</td>
<td>20’3”</td>
<td>Bracing</td>
<td>NECR truss bridge</td>
<td>Yantic</td>
</tr>
<tr>
<td>17.04</td>
<td>19’10”</td>
<td>Overhead</td>
<td>State Rts. 32</td>
<td>Yantic</td>
</tr>
</tbody>
</table>

Inland port for New London?

Ultimately, addressing all seven of these clearance impediments would greatly expand opportunities for the State Pier Facility to distribute goods arriving at the Facility throughout New England. Nevertheless, under current circumstances, double-stack mixed container capacity and connections to Class I railroads are within reasonable distance of the State Pier Facility.

Norwich Intermodal Terminal, located on the Thames River, currently provides opportunities for storage and shipyard services. The property is owned and managed by Buchanan Marine who also manages a shipyard in New Haven. [See 13#01B and gravel transload in Norwich 13#03B.] The site provides seven acres of secure outdoor storage space and shipyard services for lease. The site is accessible via rail, barge and highway, and is located roughly 12 miles from the New London State Pier Facility. While the site does not provide the same acreage as some undeveloped properties along the rail line in other communities, it is currently developed and operated specifically for storage and shipyard services, and provides for multi-modal options thus allowing for easier access and availability. {State Pier Needs and Deficiencies Planning Study New London, Connecticut, ConnDOT Project #00-940222PL MMI #1433-62, March 2011, Prepared for: State of Connecticut Department of Transportation Bureau of Aviation and Ports by Milone & MacBroom, Cheshire, Connecticut, in association with: Marpro Associates International 11 Katahdin Road Cape Elizabeth, ME 04107; FMX Associates 5 Country Road Mattapoisett, MA 02739; and The Cecil Group 241A St., Suite 500 Boston, MA 02210}

*Two of these are condemned bridges close to the State Pier and will come down as state funds permit: the Riverside Park pedestrian bridge and the EAGLE pier bridge at US Coast Guard Academy. {e-mail to ANR&P from source 5.June.13}
NEW LONDON: PIER RFP

No change on the RFP for new operator.
With the extension of current leases to 31 January 2016, the New London State Pier RFP is not scheduled to go out until late 2014 or early 2015. [See 12#11A.]

HRRC-PAN AM: CONNECTICUT PASSENGER

June. FUNDS MAY FLOW INTO PASSENGER RAIL OVER TWO CURRENT FREIGHT-ONLY LINES IN CONNECTICUT, as well as an existing passenger line, depending on federal and state action.

PAN AM'S BERLIN BRANCH

On 17 June, a dozen residents and officials discussed transportation modes between Waterbury and Berlin. ConnDOT, with consultant URS, is conducting the Central Connecticut Rail Study of commuter rail, enhanced bus, dedicated busway, and light rail. Using Pan Am's branch, passenger service could provide stops in Plymouth, Bristol, Plainville, New Britain, and Berlin.

ConnDOT planner Andrew Davis said the agency should complete the study in about one year. If each successive phase receives funding, an environmental impact study would take another two to three years, design three more years, and construction another four years.²

Pan Am operates one or two trains a week at 10 miles per hour, Davis said. Passenger trains would run at 60 miles per hour between Waterbury and Bristol, and 45 miles per hour between Bristol and Berlin, due to more changes in terrain.

METRO-NORTH WATERBURY BRANCH

At the Waterbury meeting, residents and officials asked how far along electrifying the Bridgeport-Waterbury Metro-North service has progressed. Davis said signalizing the line has stalled because of funding. {Lauresha Xhihani in Waterbury Republican-American 17.June.13; Andrew Larson in Republican-American 14.June.13}

The General Assembly's omnibus bill passed in June requires the ConnDOT commissioner to develop a plan for maintenance and improvement of the state commuter rail, including electrification of the Danbury and Waterbury branches by 2023. The commissioner must submit the plan to the Transportation Committee by 1 February 2015. {Alissa Smith in Ridgefield Daily Voice 18.June.13}

HRRC ROUTE PITTSFIELD TO DANBURY

HRRC has long advocated a public-private partnership to revive passenger service on this route [see 12#12B]. Massachusetts has proposed, in Governor Deval Patrick's The Way Forward transportation plan of January 2013, spending $113.8 million to rehab the 37-mile line from Pittsfield to the Connecticut border. {text of plan, page 19}

Colin Pease, HRRC vice-president for special projects, noted in early June that the Massachusetts General Court's revision to the plan may result in less than the full $113.8 million for the Berkshire route, but the plan may be incorporated in Massachusetts' proposed FY14 budget. As a result, significant funds are anticipated.

In Connecticut, the Northwest Connecticut Council of Governments has applied for a $15 million TIGER V grant that would make it possible to put down new tracks in Kent, Cornwall, and Canaan. {Susan Tuz in Connecticut Post 9.June.13}

² China would have built and begun operating the line within the year ConnDOT is studying. Editor
MAINE

MMA: MILL DEBT*

26 June, Millinocket. THE TOWN MAY DECIDE TO PLACE A LIEN ON SPECIALTY MINERALS AND GREAT NORTHERN PROPERTY, said Town Manager Peggy Daigle [see 13#06A]. The mill last operated in 2008 under the name Katahdin Paper, and consequently Specialty Minerals' facility to recycle calcium carbonate from the mill’s wastewater has not operated either.

The value of all site property is $62 million – 24% of the town’s total taxable value, Daigle said. “We don’t want to see any equipment leave town. It is more of a protective response than anything else.”

Attempts to reach Specialty Minerals officials were not successful. Cate Street spokesman Scott Tranchemontagne declined to comment.

Cate Street is delinquent on a $450,000 property tax payment for the second half of the fiscal year due 1 April, Daigle said. Specialty Minerals has paid its $106,665 annual bill for the $4.04 million of property on the site. The Specialty Minerals liens would ensure that the town has a priority position among creditors “regardless of where the property goes,” Daigle said. {Nick Sambides in Bangor Daily News 26.June.13}
MASSACHUSETTS

NS-PAN AM: GLOBAL WITHDRAWS

1 July, Boston. **FOLLOWING THE LEGISLATIVE LIMIT ON ETHANOL, GLOBAL PARTNERS WITHDREW ITS APPLICATION** for delivery by rail of ethanol to its tank farm in Revere [see 13#06A].

State Senator Sal DiDomenico reported that after the state budget was released this day, representatives from the company approached senators. [Another account listed Edward Faneuil, Global executive vice-president, secretary, and general counsel as the official of Global GP LLC who spoke to DiDomenico. {stop_ethanol_trains_in_greater_boston google group}] “They said the amendment would make it difficult for them to do what they wanted. They didn’t want to pursue the proposal knowing they were getting pushback from legislators and from the public....[and wouldn’t be pursuing any more licenses] “now or in the future.”

“We won against big oil, which usually doesn’t happen,” DiDomenico said. “It’s like David versus Goliath. It’s a big deal for us and for our communities that ethanol won’t be coming through here by rail.”

DiDomenico, along with state senators Patricia Jehlen, Anthony Petruccelli and William Brownsberger, proposed the amendments limiting ethanol storage or refining [see text in 13#05B]. The amendments didn’t officially pass until the budget cleared a conference committee of the Senate and the House in late June.

The bill text, which the governor has not yet signed, prohibits the Department of Environmental Protection from permitting an ethanol storage or blending facility that handles more than an average of 5,000 gallons of ethanol per day within one mile of an area with a population density of more than 4,000 people per square mile.

DiDomenico said Global Partners would continue to ship ethanol by barge to Revere, where it already mixes ethanol with gasoline.

Land use regulation versus rail regulation

Cambridge Mayor Henrietta Davis said the brilliance of the amendment was its focus on land use, which is governed by the state, instead of rail use, which is governed by the federal government. “It looked like an incredibly uphill battle from the rail side. They deserve lots of kudos for figuring out we do have control over land use.” {Erin Baldassari in Cambridge wickedlocal.com 1.July.13}

PAN AM: MORE NIMBYS**

18 June, Woburn. **THE TOWN’S ZONING BOARD OF APPEALS RULED THAT PAN AM AND TIGHE CANNOT CLAIM FEDERAL PRE-EMPTION.**

History

In 2011, when other rail-served warehouses of Tighe reached capacity, John Tighe decided to re-open the warehouse on the border between Wilmington and Woburn, with its rail-served doors, and re-do the former Montvale Yard located there [see 11#10A]. The facility opened in 2012, with its first revenue traffic in May [see 12#05A]. By January 2013 the sidetracks serving the warehouse were choked with traffic [13#01A footnote 1].

NIMBYS

As traffic began, nearby property owners were shocked that freight trains actually ran on the nearby tracks, and that the warehouse nearby would accept rail moves in the late night [see 11#12B]. Petitioners Susan Busher and Lorraine Malloy, and residents of the Holton Street/Baldwin Street neighborhood filed a complaint with the zoning enforcement officer.

When the officer found that the activities on the property conformed to existing zoning, petitioners requested review by the Wilmington Zoning Board of Appeals (ZBA).

First hearing, 2012

At the ZBA on 19 June 2012, the Board heard evidence that the Tighe warehouse at 43 Holton Street was
owned by JG Holt Limited Partnership. Petitioners presented evidence that the warehouse was 'advertised for lease by Tighe Logistics Group, that a railroad siding on the property is being used by Pan Am Railways' for freight service, generating noise between 00H30 and 03H00 such as 'severe jarring and squealing of freight cars, the idling of locomotives, and coupling and uncoupling of freight cars.'

Despite notification, the property owner did not appear.

After the hearing, ZBA was notified by special town counsel Mark Bobrowski [who represents the Upton citizens fighting GU rail activity – see 12#08A] that the regulation of the activity 'may be pre-empted by federal statute' but as the Board heard no evidence about that. On the facts it had before it, the activity was barred by zoning because a freight yard is not allowed in that zone.

Appeal to Superior Court
Petitioners appealed the ZBA decision to Massachusetts superior court. It remanded it to the ZBA for another hearing. [JG Holt Limited Partnership v Winchester Board of Appeal Civil Action No. 2012-3512. [The Pan Am STB petition – see below – stated:]'Tighe appealed the ZBA's decision to the Superior Court. The Town did not answer but the parties instead jointly moved to remand to reconsider whether the decision was preempted by (federal statute). The Superior Court remanded for that purpose. Pan Am was not a party to the Superior Court proceedings.]

Second hearing, 2013
On 18 June, ZBA held a second hearing. Tighe was present, as well as Rob Culliford, Pan Am general counsel, and Cynthia Scarano, Pan Am executive vice-president. According to one reporter, Culliford 'tried to convince the board that Pan Am was simply a common carrier for Tighe, not a private contractor, and thereby exempt. He stated that Tighe was the private contractor who worked directly with customers. He told the board that Pan Am doesn't work for Tighe - they don't take stuff off the trains or put stuff on.

"Tighe doesn't control us," Culliford added. "We're not private contractors, we are common carriers not paid by Tighe." "We just put the cars onto the track so that workers can work," Scarano said.

'Culliford'] brought up a situation that has been referenced in the past, that of Devens Recycling. In that scenario, Culliford said, Pan Am does have a contract with the recycling center. In this one, he said, they don't. The neighbors have argued from day one that Pan Am is not exempt, that Tighe is a private contractor, and that the tracks only serve Tighe.'

Scarano also stated that Pan Am operated at night because commuter rail used the line during the day. {Ryan Leroche in Winchester Daily Times Chronicle 19.June.13}

ZBA decision follows STB
The written decision of 24 June stated that 'the Board finds that this matter is controlled by the ruling of the Surface Transportation Board in Devens Recycling Center LLC (2007) [see 07#04A]. The track located on the property of the Plaintiff [Holt] is “private track” and the Plaintiff does not have the benefit of [federal] pre-emption....

'The Board...hereby orders the Plaintiff and its agents and contractors to immediately cease and desist all rail traffic to the warehouse located at 43 Holton Street.' {text of decision}

The Devens Recycling decision
In Devens, the facility owner asked (because its lender wanted a determination that the STB would not govern its activity) the STB for a ruling that it did not exercise jurisdiction over the side track serving its facility. Devens built the track and entered into an agreement with Pan Am to serve the facility.

The STB ruled, citing Willis [see box]: 'The agency’s jurisdiction, however, does not extend to wholly private rail operations conducted over private track, even when such operations are conducted by an operator that conducts common carrier operations elsewhere, if it operates on the private track exclusively to serve the owner of the track pursuant to a contractual arrangement with that owner.' [07#04A]
Traffic continues
Despite the ruling [though it was not yet 'served' on the parties – editor], Pan Am continued to serve the facility. On the 20th the yard had one car not spotted; on the 21st two spotted; and on the 24th about 14 cars. {railroad.net forum}

A call to John Tighe, and an e-mail to Cyndi Scarano, asking about an appeal of the ZBA decision were not returned before publication. {editor}

Court order to enforce injunction
In late June, according to the Pan Am filing at the STB [see below]: 'The Town...announced plans to move for a state-court injunction enforcing that order, with a hearing on the motion to be set for the week of July 22. Counsel for the Town would not agree to defer state-court proceedings to allow this Board to consider the legality of the Town's actions.

PAN AM: TO STB ON TIGHE
1 July, DC. PAN AM REQUESTED AN EMERGENCY ORDER THAT FEDERAL PRE-EMPTION APPLIED to its service to Tighe, through its attorney Andrew Nichols of Winston Strawn.

Tighe not a shipper
The petition stated inter alia: 'Pan Am does not conduct rail operations in the Town pursuant to an exclusive arrangement with Tighe. Indeed, although Pan Am and Tighe coordinate in marketing the distribution center for public service, Tighe is not the shipper.

'Rather, as a common carrier, Pan Am transports goods on behalf of shippers who choose to send their cargo to the Tighe warehouse for delivery to distribution centers and, ultimately, retail customers. Consistent with this use, the warehouse is held out in marketing as a delivery point on Pan Am's system map....'
The yard co-owned
'Tighe's warehouse sits alongside a rail line, which Pan Am has rights to use. In between the warehouse and the rail line sits a rail yard known for many years as the Montvale Yard. The Yard is comprised of, among other things, two siding tracks, where trains pull off the main line to unload cargo, avoid other trains, and rearrange cars. The Yard is not owned by a single entity. The track immediately next to the warehouse is owned by Tighe. The other track is held by Pan Am under an exclusive freight easement from the Massachusetts Bay Transportation Authority. Pan Am alone operates trains in the Yard. When trains arrive in the Yard, Tighe Logistics is responsible solely for unloading trains, and for reloading the cargo on trucks and occasionally on trains.'

Ownership irrelevant
'Contrary to the ZBA's amended order, it is irrelevant to express preemption principles that Tighe owns one of the tracks. The reason is that Tighe's track is a "side track[",}" and "transportation" includes "a ... yard, property, facility ... or equipment of any kind related to the movement of...property by rail, regardless of ownership." Id. at §§10501(b)(2), 10102(9)(A). Thus, it does not matter whose side tracks Pan Am is using; the critical fact is that it is acting as a rail carrier engaged in rail transportation. Accordingly, like the ZBA's declaration that the "freight yard" cannot be used as such, the ZBA's ban on "all rail traffic to the warehouse" – presumably meaning the track owned by Tighe – is a remedy "with respect to regulation of rail transportation" on "side tracks." 49 U.S.C. § 10501(b). The ban is thus expressly preempted.'

Not a private operation
Addressing whether Devens applied, as the ZBA ruled [see article above], Pan Am argued: There 'the Board found it was "built to meet a shipper's own transportation needs" – in that case, Devens Recycling – "pursuant to a contractual agreement" with the railroad. It was thus irrelevant that Boston and Maine conducted common carrier operations elsewhere. That made sense, because such "wholly private operations" are not "subject to the jurisdiction of the Board." Devens Recycling....

'Here there are no such "wholly private operations," and Pan Am has no exclusive contract with Tighe to meet Tighe's "own transportation needs." Rather, Pan Am holds itself out as a common carrier serving anyone desiring to ship to Tighe warehouse, as publicly shown on Pan Am's system map and in Tighe's marketing materials. And Pan Am, in fact, sends freight to Tighe on behalf of third-party shippers. Thus, it cannot be said that Tighe refused to allow Pan Am "to provide service over the track to any other shipper." By Tighe's own design and wish, the track is used by numerous other shippers-third parties who utilize Pan Am to send their goods to Tighe, and from there on to distribution centers and consumers.

'This is nothing like a "wholly private operation." "Private track is typically built by a shipper (or its contractors) to serve only that shipper, moving the shipper's own goods, so there is no "holding out" to serve the public at large."'

Request
Pan Am concluded its petition thus: 'Pan Am requests that the Board promptly issue an order:

(a) declaring that the Town's regulation of the Yard as inconsistent with the Town's zoning laws is preempted;
(b) holding that the Town's order that "all rail traffic to the warehouse" "cease and desist" is preempted; and
(c) granting such further relief as the Board may deem proper.' {Boston and Maine Corporation and Springfield Terminal Railway v Town of Winchester et al, STB website, filings page, FD 35749}
responsibility to maintain the hydrants on its property, said Town Fire Chief Tom Conway.

Town Manager John Curran commented later: “Before this happened, the town had been on them about getting their hydrants fixed. This fire just demonstrated the validity of our concerns. They need to comply with safety regulations. Pan Am has had a plan in place, but unfortunately didn't fix the hydrant in time.”

Curran estimated the cost to Pan Am at about $600,000 to repair the hydrants and piping on its Iron Horse Park property.

Cynthia Scarano, executive vice president of Pan Am, would not comment on whether Pan Am knew that the hydrants were out of service. Scarano said the company has been working with the Billerica Fire Department over the last year, testing the system to see what upgrades are needed. She emphasized that the hydrants next to the occupied buildings are working.

Conway said Iron Horse Park has several old, broken hydrants not maintained for years. “And this has been our concern that one of those dry wood buildings would eventually catch fire. It's too bad it's gone this long, but we've at least had productive meetings with them, and they're making improvements for future situations.” {Rick Sobey in Lowell Sun 17 June.13}

**PAN AM: FAILURE TO CLEAN UP***
18 March, northern Massachusetts. **PAN AM AGREED TO A CONSENT ORDER TO CLEAN UP ITS TRACKS**. According to its terms, the Massachusetts Department of Environmental Protection (MassDEP) received complaints:

- in 2005 about two brush fires in Deerfield which engulfed railroad ties abandoned along Pan Am rail lines.
- in 2007 about abandoned ties along the Pan Am line in Charlemont above the Deerfield River.
In 2004 MassDEP issued a notice of enforcement conference to Pan Am about ties along its lines near the Wachusetts reservoir in West Boylston and Sterling.

**Statute violation**

'The discarding and abandonment of railroad ties that are not intended for re-use constitutes open dumping and illegal disposal of solid waste in violation of General Laws Chapter 111 sections 150A' and state regulations.

In 2007 the state issued Notice of Intent to Assess a Civil Administrative Penalty. Six years later, the parties reached this consent order.

**What Pan Am agreed to**

- The railroad will cease disposing of ties alongside the right-of-way, and train workers to dispose of materials properly.

- By 1 September 2013 Pan Am will date 'used and scrap ties staged along its tracks....All ties so marked shall be dated with the month and year on which they were removed from rail service....' According to the attachment to the order, used and scrap ties may remain in place for one year.

- Pay MassDEP $59,746.50 within 30 days, with $10,000 suspended and dropped if Pan Am does not violate the Consent Order in the next year.

The Order was signed by Michael Gorski, regional director of MassDEP Western Regional Office, and Cyndi Scarano, Pan Am executive vice-president. {text of order}

**Why did the consent order require six years?**

Ed Colletta, MassDEP spokesperson, explained how the years passed: 'Back in 2007, MassDEP issued a Unilateral Administrative Order and a Penalty Assessment Notice that contained a substantial fine for Pan Am Railways and a requirement to come back into compliance. As is their right, they appealed both the UAO and PAN, citing federal pre-emption.

'That began a lengthy appeals process that also included settlement negotiations between the parties. When those discussions did not produce a settlement, Pan Am decided to go to court and argue their case, and so the case then shifted over to the Massachusetts Attorney General’s Office, which represents state agencies (including MassDEP) in court trials.

'There was a lengthy preparation by both sides to bring this issue to trial. However, as that date approached, Pan Am decided not to go to court [bravo! editor] and instead reached a negotiated settlement with MassDEP and the AG’s Office and that was the settlement announced earlier this year.' {e-mail to ANR&P 27.June.13}

**NEW HAMPSHIRE**

**CCRR: MORE PROPANE?**

24 June, West Lebanon. *THE TOWN OF LEBANON PLANNING BOARD DISCUSSED THE SAFETY OF THE RYMES FACILITY* here  [Rymes recently received cars via Pan Am, but normally does so via NECR – see 13#04B Vermont]. The town fire chief, Chris Christopoulos, said Rymes Propane and Oil, headquartered in Antrim, New Hampshire, currently operates a propane facility in a “portable mode” meaning trucks take on the propane directly from railcars in the yard using a specially-designed transloader [see photo and story 11#01B].

The chief cannot limit the quantity of propane stored there. The facility’s permit with the fire department allows up to 15 railcars carrying about 33,500 gallons of propane each.
Proposed expansion
Ralph Young, the West Lebanon office manager for Rymes Propane and Oil, declined to comment on the site’s operations or plans for an expansion, only that the site had passed inspection.

Christopoulos told the Planning Board that Rymes plans to expand its facility into a more “permanent” state. “Rymes has intentions of moving this facility across the cement pad closer to the roundabout building, with a hope of putting four 30,000-gallon storage tanks, two transloaders, and parallel spurs so they can offload product.”

Leak effect
In case of a leak, Christopoulos said, propane would linger in the heavily populated residential area containing the Mount Lebanon School and the West Lebanon fire station.

Additionally, the chief said, he has not been able to enforce his preference that the railcars there are not parked underneath the bridge carrying traffic from South Main Street to Route 12A in West Lebanon; cars there would complicate a fire department response to a potential gas leak. {Ben Conark in Valley News 30.June.13}

[See map in 00#10. Rymes and Ciment Quebec now in Westboro Yard.]

No comment
John Rymes wrote on 3 July: 'No comment at this time.' {e-mail to ANR&P}

MBRX: NOT YET*
25 June, Milford. THE CUSTOMER HAS NOT YET OPENED so Peter Leishman is not yet operating the Milford-Bennington Railroad. He said Granite State Concrete is ending use of generators at its quarry, and instead wiring into the power grid. The changeover has taken weeks longer than expected; the customer hopes to start operating “next week.”

He has heard nothing from NHDOT on the new RFP [see 13#06A]. {ANR&P phone conversation}

VERMONT

VRS: MORE AGGREGATE TRAFFIC
June, Florence. OMYA WILL EXTEND RAIL INTO THE HOGBACK QUARRY TO MOVE AGGREGATE, according to a recent company newsletter. It will 'shortly file an Act 250 permit application to extend the existing rail line by 1,225 feet into the south end of our site.....The rail line extension provides a means to economically ship aggregate throughout the state of Vermont where it is greatly needed, reduce the number of trucks hauling aggregate on Vermont highways and allow for greater utilization of the material that is not needed for feedstock at our Verpol facility.' The company anticipates construction will begin this summer with completion by the fall. {staff report in Rutland Herald 1.July.13}

More detail
Erik Bohn, director Logistics - Region Americas, wrote on 2 July that the aggregate is 'stone quarried, along with the marble (calcium carbonate), that is not suitable to use as feed for the plant. The 2012 Act 250 Hogback Quarry permit amendment authorized year-round operations (from seasonal) at the site. This enables greater access to, and use of, the quarried rock that is not suitable for feed to the Vermont facility.

'The quarrying operation is permitted to process up to 500,000 tons of ore per year. Of this, 300,000 tons is available for plant feed and the remainder as aggregate for area road construction or other like uses.

New rail move
Omya has received temporary Act 250 authorization for delivery of up to 1,000 tons of aggregate a week to the Town of Chester for municipal construction projects. Bohn noted: 'The aggregate move to Chester is by rail [about a 50 mile move via VTR and GMRC to Chester, which lies west of Bellows Falls – editor]. We are
permitted to make limited rail shipments from Hogback while permitting and construction of the rail spur extension is underway.' {e-mail to ANR&P}

**VRS: PROPANE?**

14 June, Bellows Falls. **THE TOWN HAS HELD UP A PROPANE FACILITY HERE.** Town Manager Willis “Chip” Stearns said this day GMRC, a part of VRS, has started site preparation of a new wholesale propane depot between the GMRC lines and Route 5, adjacent to the former Steamtown Rail Museum property, now owned by GMRC. Eric Benson, VRS and GMRC staff attorney, reported on 15 June the state is paying one-third of the cost of the new rail spur into the depot.

Per Benson, the railroad approached former property owner Horace Bezanson, and purchased four acres with two houses and a recycling center. GMRC will transform one house into an office and remove the other two buildings. GMRC helped the Bezansons move to Lebanon New Hampshire, closer to family.

Immediate plans call for three 60,000-gallon tanks; the site has room for seven, said Benson. Benson called it a “multi-million-dollar project,” while Stearns put the value at close to $3 million and added that Dead River will manage the facility for the railroad.

**Firefighting concerns**

Stearns said the project does need a letter from the Rockingham Volunteer Fire Department and the Bellows Falls department about providing fire services. He said he had instructed the two fire chiefs to withhold any such letter until more information is available.

Benson related that the railroad was working with the town and village for more than a month; the Stearns comment “was the first I’ve heard about” concerns.

The site is in Rockingham and outside the Bellows Falls village limits, adjacent to the Bellows Falls Industrial Park. However, the village fire department and the village hydrant system will serve it, Stearns said, though the closest hydrant was 1,000 feet away.

Stearns noted the railroad pays no property taxes, and thus does not cover the cost of firefighting services. It leases the tracks and land from the state. Chris Cole, VAOT chief of planning and intermodal systems said the state pays no property taxes to the town.

**Railroad contribution**

According to Benson, the railroad helped with petroleum fuel depots in Walpole New Hampshire and other towns. The railroad would be willing to help with a “one-time” contribution, such as buying a piece of equipment.

**Town regulation?**

Benson mentioned the 2004 US Second Circuit Court of Appeals ruling that Act 250, the state state covering all property development, did not apply to railroad development because of federal pre-emption. {Susan Smallbeer in Rutland Herald 14 June.13}

The Court there [see 05#04B] wrote: ‘[I]n this case preemption is clear: the railroad is restrained from development until a permit is issued; the requirements for the permit are not set forth in any schedule or regulation that the railroad can consult in order to assure compliance; and the issuance of the permit awaits and depends upon the 15 discretionary rulings of a state or local agency.' {Green Mountain Railroad Corporation v. State of Vermont, Docket #04-0366, decision from court website}

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**MARITIMES**

**NBSR-EASTPORT-SAINT JOHN: PULP MOVE?**

18 June, Mattawamkeag. **WOODLAND PULP IS SENDING PULP VIA RAIL TO SAINT JOHN,** according to an observation here (where the NBSR branch to Baileyville, Maine and Woodland Pulp joins the main line)
this day. An eastbound oil train set off 11 tank cars and picked up seven cars of pulp. In the same hours a westbound manifest train set off ten empty 50-foot boxcars for furtherance to Woodland.

Woodland Pulp has trucked pulp to Saint John (the observer spotted MSC containers on chassis through McAdam), and tried rail with 30 carloads earlier this year. The cars moving this day form part of an 80-carload move.

MSC is exporting the pulp. {NBRail}

**Saint John comment**

Andrew Dixon, senior vice-president planning and development, said: 'We are aware that Woodland Pulp has moved export in containers on MSC. Future volumes are not known but the MSC service is of obvious advantage to that mill as well as other mills in Maine, given the one-hour drive time from the Maine border to the Port of Saint John.' {e-mail to ANR&P 24.June.13}

**Eastport comment**

The Port of Eastport has handled the export of nearly all production of Woodland Pulp for decades. In 2012 it moved 414,000 tons. The 110 carloads on rail would total (assuming 100 tons per car) only 11,000 tons, a small fraction of the annual total.

Chris Gardner, Port Authority executive director, wrote on 20 June: 'There are no long-term concerns here; this is a move that we trust is dictated by the immediate market. The long-term success of the mill is in all of our best interest and therefore short-term moves that contribute to that continued success are to be supported.

'The relationship between the mill and the Port of Eastport is one of mutual success for over 30 years and we are confident that the relationship remains very strong.'
Mill no comment
Scott Beal, Woodland spokesperson, wrote on 20 June: 'It is our practice to not make public comments on this aspect of our business.' {e-mails to ANR&P}

Still moving
On 2 July, a rail observer reported an eastbound NBSR lifted seven pulp boxcars at McAdam for Saint John. {RailsNB}

CN-HALIFAX: END OF REFINING*
19 June. IMPERIAL OIL WILL CONVERT ITS NOVA SCOTIA REFINERY INTO A STORAGE/Terminal FACILITY, THE COMPANY ANNOUNCED. A release this day said no buyer could be found after a search [see 12#07B]. “The results of the marketing effort illustrate the challenges of operating a refinery of Dartmouth’s scale in the competitive conditions of the Atlantic Basin market,” said Rich Kruger, Imperial Oil chairman and CEO.

Transition period
Imperial said it expects start-up of converted facilities later in 2013. The production of refined oil is expected to end by the end of 2013. The refinery began production in 1918 and has a capacity of approximately 88,000 barrels a day. {release}

Current rail
[See map in 13#04A for extensive CN rail access.]

Transporting product
Imperial’s Merle MacIsaac said he expects the storage/terminal facility will get refined product delivered to its facilities mainly by ship. 'It is possible that we will receive some refined product by rail.'

   Product from the facility will be 'delivered primarily by truck and possibly by sea. We have no current plans to use rail for product delivery.'

   Regarding sources of supply, he wrote 'the Atlantic Basin has a significant amount of excess refining capacity. This presents us with the opportunity to find one or more potential suppliers that can meet the needs of this region. We will be undertaking this work and are confident we’ll have the products on hand when they’re required.' {e-mail to ANR&P correspondent Tom Peters 25.June.13}

RAIL FREIGHT FACILITIES

Described in this issue.
Dead River (VRS, Vermont) New propane facility in Rockingham.
Global Partners (Pan Am, Massachusetts) Withdraws plan for rail-delivered ethanol to Revere.
Granite State Concrete (MBRX, New Hampshire) Not yet started for 2013.
Great Northern Paper (MMA, Maine) Shuttered mill has tax lien?
Imperial Oil (CN, Nova Scotia) Closing rail-served refinery.
OMYA (VRS, Vermont) To start aggregate move.
Rymes (CCRR, New Hampshire) To expand propane facility.
Tighe (Pan Am, Massachusetts) Winchester orders rail halted.
Woodland Pulp (NBSR, Maine) Railing pulp to Saint John./
PEOPLE, EVENTS

MERR: MANAGEMENT CHANGES*
Mike Moore has succeeded Don Marson as superintendent at the Maine Eastern Railroad [see 13#06A]. Moore has served the Maine Eastern for seven years in train service, and in such posts as designated supervisor of locomotive engineers and mechanical supervisor.

MERR parent Morristown & Erie Railway also announced that Chief Mechanical Officer Charles Jensen is promoted to vice-president and chief operating officer. He will oversee the daily operations of the M&E and Maine Eastern Railroad.

EDITORIAL

WE NEED A REGIONAL APPROACH TO PRE-EMPTION**
While I cheer on any growth of rail freight, neighbors of proposed facilities emerge to fight them. In Massachusetts, the towns through which an ethanol unit train would run to Revere have effectively used a state statute to bar the train [see this issue]. Opponents of the New England Transrail facility (which proposes to create the micro-railroad Wilmington & Woburn Terminal Railroad) in Woburn and Wilmington have long stalled that effort; it awaits an EPA ruling [see 12#06B]. Also in Wilmington, neighbors of the Tighe warehouse have persuaded the town to call a halt to its rail-served activities [see this issue].

Farther west, NIMBYs in Grafton (proposed propane facility) and Upton (existing bulk transload facility) are fighting the GU at the STB [see 13#06A]. Up in Vermont, the Town of Rockingham is erecting hurdles to a VRS-proposed propane facility there [this issue].

Railroad operation a problem too
Even when a facility is permitted to operate, citizens complain about pollution, unnecessary idling, noise, parking of trains, and so forth.

As I read STB and court rulings, federal pre-emption will overcome the local objection to siting, and often to operation, in each case, as long as the facility is not a private non-railroad facility using only private track.. The process of town-by-town battles is expensive, lengthy, and usually fruitless (ask the Town of Ayer), benefitting only the lawyers and consultants for each side.

The time has come for a region-wide discussion of the need for, and siting of, rail freight facilities as well as their operation. MassDOT, because the Commonwealth has so many ongoing disputes, should take the lead in convening a discussion leading to a voluntary Best Practices Code for Siting and Operating Rail Facilities.

The Code should ask railroads and planning agencies to provide ample notice to towns affected by new freight and passenger activity, and ask the towns and regions affected to agree to work with the railroad and shippers to find the best site, and aid in its development. Railroads and shippers should agree to fund additional firefighting or other public safety needs, just as truck-served facilities agree to highway access improvements.

Once the facility starts up, railroads need to pay attention to the effect of their operation on the surroundings. Pan Am, for example, has pledged better cooperation to several agencies and towns in this regard.

Rail is better than the alternative: make the case
The citizens of New England need to recognize that their toasters, cars, wood pellets, propane, etc don't grow on the oaks in their town common. Those products and many, many more arrive by rail and therefore require some place to unload.

Nor does their refuse and scrap evaporate into the air. It must move to points for disposal, can move best
by rail, and therefore needs some place to load.

Our elected officials must have the guts to stand up to NIMBYs. Politicians must explain the need to railroads and citizens alike for [here the politicians will whisper the word] “community responsibility.”

Rail freight is environmentally preferable, and far less costly to our highway structure, than truck. Our governors must frequently announce that fact, and urge all parties to abide by a Code of Best Practices.