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

Formal issue 14#01B 10 February 2014

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

Blue header & table of contents: new article

REGIONAL
MMA: Fortress will discuss plans “sooner.”
MMA – other court proceedings++
- Estate sues Bakken providers, handlers.*
- Victims seek to consolidate lawsuits in Maine.*
Pan Am: Joins other non-Class 1s at AAR.*

NEW YORK
BKRR: Pan Am serving well, CP suspends service.


Québec

MMA: A description of how Tafisa diverted to truck.*

CONNECTICUT

MAINE

MMA asset sale: MDOT open to investments.*

Searsport: Sprague’s Therriault on use, traffic, new bulk system. Gelinas on need for dredging. Maps.*

Crude through Maine: Year-end stats show Pan Am moved the last two months.*

Pan Am/Portland: The track to the International Marine Terminal should be finished “this summer.”*

Massachusetts

GU: STB outlines how much Grafton may regulate the new propane terminal.*

[No report.]

New Hampshire

RHODE ISLAND

VERMONT

MARITIMES

CN: Details on proposed abandonment of 44 miles in the middle of the province’s east coast. Map.*

Halifax: First wood pellets exported.

Halifax: 2013 containers rise, but bulk falls.*

Halifax: Sterling becomes new marine fuel supplier.*

RAIL SHIPPERS/RECEIVERS

A cross-reference to companies mentioned here.

PEOPLE, POSITIONS, EVENTS

[See ad for NEARS inside.]

EDITORIAL

[No report.]

FROM THE PUBLISHER

No crude reports

No sightings in New Brunswick reported, alas.

- Chop Hardenbergh Next formal issue 24 Feb.

REGIONAL

FORTRESS PLANS

John Giles, who is handling the creation of the Fortress railroad to assume operation of the MMA assets, wrote on 3 February: 'Our plans are developing as we speak. I’m getting to know the property and the people right now. Will have more sooner.' {e-mail to ANR&P}

MMA: OTHER PROCEEDINGS*

Note. While the US Bankruptcy Court has approved the sale of most of the assets of MMA to Fortress, three points remain of interest to readers.

Liability for the costs and lives of the Lac Megantic disaster
This breaks down into two: The wrongful death lawsuits against various corporations, and the lawsuit filed by the MMA estate against various corporations.

I believe that the lawsuits, with inevitable appeals, present a relatively new question to the railroad industry: who bears how much liability for damages from mis-labelled, or un-labelled, product in railcars. This especially applies to the volatile Bakken crude.

The courts must also ascertain how much liability MMA itself bears because its engineer failed to set enough handbrakes, and the locomotive powering the air brakes shut down.

This issue describes the status of the recent proceedings.
LMS and locomotives sale
As far as I can tell, the sole remaining assets of interest to railroaders are the transload company Logistics Management Systems, not a part of the bankruptcy estate [see 14#01A], and the 25 locomotives Fortress chose not to buy [see 14#01A].

Correction
LMS, wrote Ed Burkhardt of Rail World on 6 February, 'is a wholly owned subsidiary of MMA Corporation, which is the parent of both MMA Railway and LMS. MMA Corporation (which, like LMS isn’t in bankruptcy) has a diverse group of shareholders, and doesn’t include Rail World.' {e-mail to ANR&P}

MMA v HANDLERS OF BAKKEN CRUDE
30 January, Bangor. THE MMA ESTATE SUED WORLD FUEL SERVICES, WESTERN PETROLEUM COMPANY, AND PETROLEUM TRANSPORT SOLUTIONS, LLC in US Bankruptcy Court here.

Defendants and their action
The suit stated: 'The Train’s cargo of crude oil, which was produced from the Bakken Formation in North Dakota, was owned by WFSI. WFSI, along with WFCS and Western Petroleum, arranged for its transport by rail from New Town, North Dakota to an oil refinery in Saint John, New Brunswick (Canada). The tank cars carrying the cargo of crude oil were leased by Western Petroleum.

'Safe and prudent shipping practices, as well as governmental regulations in the United States and Canada, mandate that parties who offer for shipment certain types of products that are deemed to be hazardous -- which includes crude oil -- must properly classify, identify, label, and package the product so as to enable safe transport of such cargo.

'The shipping documents provided by Defendants identified the Train’s entire cargo of crude oil as a Class 3 flammable liquid having a high flash point – the temperature at which organic material gives off sufficient vapors to ignite – and, hence, a low danger. These representations were false. On the contrary, tests conducted after the Derailment have confirmed that the crude oil had a dangerously low flash point and was highly volatile.

'The tank cars that Defendants provided to MMAR for transport of their crude oil were all of the same model and design. Defendants knew or should have known that, without reinforced shells, head shields, valves, and other exposed fittings, this type of tank car was prone to rupture upon derailment. Further, Defendants knew or should have known that unless MMAR was properly advised of the correct classification of the hazardous nature of the crude oil, unreinforced tank cars were unsafe and unsuitable for the transport of such cargo.' {paragraphs 6-9}

MMA would have behaved differently if the crude were properly classified
'Had Defendants properly classified, identified, and labelled the Train’s crude oil cargo, MMAR could and would have taken steps that would have avoided the Derailment....Had Defendants made MMAR aware that their crude oil cargo was, in fact, a Packing Group I or II hazardous substance, MMAR would have implemented safety

COMPANIES FINED FOR MIS-LABELLED BAKKEN CRUDE
On 4 February, USDOT announced that inspectors from Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration started conducting random tests in summer 2013 to ensure that producers, shippers and railroad companies properly labeled oil from the Bakken shale region of North Dakota.

The inspections found that 11 of 18 samples from cargo tanks were not properly identified and labeled. Three companies were fined a total of $93,000: Hess Corporation, the Whiting Oil and Gas Corporation, and the Marathon Oil Corporation.

Regulators also said they would expand the scope of their inspections to include other factors that affect the proper characterization and classification of oil, such as corrosiveness, hydrogen sulfide content and gas concentrations. {Jad Mouawad in New York Times 4.Feb.14}
procedures and protocols that would have prevented the Derailment. Among other things, these procedures and protocols would have required that the Train never be left unattended, always be parked on a blocked, side track, and never be parked on a main track.\(^1\) \{paragraph 74\}

**Lawsuits**

The Complaint noted that the railroad is a defendant in suits filed in Illinois by victims, in Megantic by victims, and the Province of Quebec.

The Complaint did not state the amount of damages MMA was seeking. \{Court website, Case 13-10670, Document 605\}

**VICTIMS v MMA, et al**

Judge Nancy Torresen of the U.S. District Court for the District of Maine on 31 January heard the arguments of many parties to consolidate many cases related to damages from the Lac Megantic disaster in the federal court in Maine. Parties include Western Petroleum, CIT Group, Rail World, Rail World Locomotive Leasing, Ed Burkhardt, victims, Dakota Plains Transloading, Dakota Plains Marketing, Petroleum Transport Solutions, DPTS Marketing, and Great Northern Paper (involved because of the Troester wrongful death case).

She has not yet decided. \{US District Court website, Docket #: 1:13-mc-00184-NT, document 2\}

**PAN AM: JOINS AAR\(^*\)**

30 January, DC. **PAN AM RAILWAYS, INC., HAS JOINED THE ASSOCIATION OF AMERICAN RAILROADS (AAR) AS A NEW FULL MEMBER.** The Indiana Rail Road Company joined at the same time. "Pan Am's priority is to operate a safe, cost-effective, service-oriented railroad, therefore it only makes sense to become a member of an association with that same commitment," said David Fink, president of Pan Am Railways. \{AAR announcement\}

**St.Leonard to Derby**

According to its website, 'Pan Am Railways is North America's largest regional railroad system. PAR's routes stretch from Saint John and St. Leonard, [New Brunswick] to Rotterdam [Junction, New York] and Derby [Connecticut].

'PAR consists of the Springfield Terminal (ST) and Pan Am Southern (PAS). A haulage agreement with the Irving family of railroads extends ST's reach into Northern Maine and New Brunswick. The combined system, including haulage rights, totals approximately 1700 route-miles. PAR's connections include all four eastern Class I systems (CN, CP, CSX, NS) as well as over 20 regional and short line railroads.' \{Pan Am website\}

**Not just the Class Is**

Some readers, like your editor, found enlightening the fact that several non-Class Is belong to the AAR: Alaska Railroad, Anacostia & Pacific group, Florida East Coast, Genesee & Wyoming group, Iowa Interstate, Iowa Pacific Holdings, Vermont Railway, Watco Companies, and Wheeling & Lake Erie. \{AAR website\}

As to why the two railroads joined, one industry wag commented: 'Indiana Railroad is partially owned by a Class I, and Pan Am is trying to change its spots.' \{e-mail to ANR&P\}

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**NEW YORK**

**BKRR: NO MORE CP INTERCHANGE?**

8 February, Eagle Bridge. **CP SUSPENDED ITS INTERCHANGE, AFTER RUNNING TO EAGLE**

\(^1\)The known facts of the disaster show that MMA parked the train on a main line, and left it unattended and unblocked. See complaint in 'Victims' motion, U.S. District Court District of Maine (Bangor) Docket #: 1:13-mc-00184-NT, document 2, Memorandum of Law in Support of Transfer Motion, Page 4 of 18. **Editor**
BRIDGE this day. Train number D44XX ran light engines and returned with 12 empties.

New arrangements
Until recently, all interchange with BKRR ran via the D&H. Now BKRR has added cars off CSXT which are interchanged to Pan Am, which makes regular delivery to the BKRR at Eagle Bridge. Cars off the D&H will now be interchanged to Pan Am for delivery, along with the CSXT cars, by switcher RJ-1.

Previous effort
In 2009, BKRR and CP tried to use Pan Am to complete deliveries. CP left the cars at the Crescent interchange track [see map and article in 09#06B] for Pan Am to deliver using switcher RJ-1. However these cars sat for days; eventually CP decided to again exercise its trackage rights, running twice a week to Eagle Bridge. {D&H e-list}

Pan Am Southern providing excellent service
Bill Taber, BKRR general manager, reported, “The tide has turned completely with Pan Am Southern. They are doing very well by us.”

On the other hand, he found that CP's concentration on high-volume commodity trains – which began long before Hunter Harrison became the honcho at CP – and lack of focus on carload freight led to a lack of resources for the carload shippers. “I have gotten calls from customers on CP asking me to come out and switch them. I have to explain that I cannot do that.”{ANR&P discussion 10.Feb.14}

ALBANY: OVERALL 2013 CARGO FLAT
2 February. ALBANY-RENSSELAER PORT DISTRICT GRAINS INCREASED 18%, BUT SCRAP IRON DECREASED 15%, according official port statistics for 2013. Total waterborne cargo reported by the District came to 391,414 tons in 2013, versus 391,470 tons in 2012.

No petroleum figures
The Port Commission statistics do not cover data on petroleum products handled at facilities within its District. At this point, the Buckeye terminal supplies crude to Irving Oil, among other receivers, and this data is not reported [see 13#02B]. The Global terminal, which supplies refineries in New Jersey [see 13#01A].

Note that the Port’s 2010 look at the future [see 12#02A] anticipated Buckeye would be handling mostly ethanol; crude was not even discussed.

Scrap decreased, but remained the leader
Scrap iron decreased 30,393 tons from 205,702 tons in 2012 to 175,309 tons. Grains increased 20,348 tons or 18% from 112,752 tons in 2012 to 133,100 tons in 2013.

Molasses, ranked third, had the largest increase: 110% to 42,125 tons. Woodpulp, 4th in tonnage, decreased 27% to 20,780 tons in 2013.

Heavy Lift/Project cargo
This, either by ship or barge, decreased 5,439 tons from 24,539 tons in 2012 to 19,100 tons in 2013.

Inbound/Outbound
Inbound increased 19% or 10,457 tons in 2013 from 54,892 tons in 2012, but remained far below outbound. The latter decreased 3% or 11,513 tons in 2013 from 336,578 tons in 2012.

Ship/Barge
Ship transport decreased by only 23 tons to 389,377 from 389,360 tons in 2012. Barge transport dropped in half, from 2,110 tons in 2012 to 1,077 tons in 2013.
Bulk, Breakbulk, Heavy Lift/Project Cargo
While bulk cargo increased from 338,526 tons in 2012 to 350,534 tons in 2013, breakbulk declined from 28,405 tons in 2012 to 20,780 tons in 2013, and heavy lift/cargo from 24,539 tons in 2012 to 19,100 tons in 2013.

Longshore hours worked
These increased from 33,720 hours in 2012 to 44,389.5 hours in 2013. {Albany-Rensselaer Port District 2013 Tonnage Longshore Hours Report, emailed by POA general manager Richard Hendrick to ANR&P correspondent Laurel Rafferty, 24.Jan.14 and an amended report emailed by POA information technology director Tom McGuinness 2.Feb.14}

QUEBEC
MMA: MORE ON TAFISA DIVERSION TO TRUCK*
1 December, Lac Megantic. DETAILS OF TAFISA’S EMERGENCY TRUCK FLOTILLA were supplied by Christine Couture, the supply chain manager. Prior to the 6 July disaster, the plant weekly sent out 50 to 60 railcars to distant points, primarily Ohio and Michigan, and 200-210 trucks to destinations under 600 miles.

After 7 July, Tafisa asked its trucking providers to increase frequency [see 13#07A, 13#08B], and added one provider to the existing 10. The loading stepped up to 24/7, 330 to 360/week. Distant customers were served by rail via transloads elsewhere in Quebec [one located on the Quebec-Gatineau Railway – MMARail e-list].

Of the change, Couture said, “It is faster to load the product on the trucks. Flat cars, for instance, take a long time to load, because there is a lot of tarping to be done.” That said, Tafisa will not get hooked on the convenience of trucking: Its distant customers are well accustomed to the train schedules, direct shipment by truck to them is more costly, and double-handling the shipments to the reload centres incurs added costs. {Carroll McCormick in TruckNews 1.Dec.13}

CONNECTICUT
NEW LONDON: 2013 CALLS, CONTAINERS++
3 February. THE CITY OF NEW LONDON PROVIDED STATISTICS ON TRAFFIC AT THE SHEAR STATE PIER. While 2013 ship calls dropped, the tonnage rose slightly over 2012.

The pier handled some domestic containers. According to Logistec, 'The domestic and container cargo includes various steel products that we received either via rail, truck, or container. The containers would have been discharged in NY/NJ and trucked up here for us to strip and store for further distribution.' {e-mails from Ned Hammond, economic development coordinator, Office of Development and Planning}
MMA ASSET SALE: MDOT POSITION*

29 January, Bangor. **MDOT COMMISSIONER DAVE BERNHARDT SAID FORTRESS WILL TAKE OVER 30 MARCH “BECAUSE THE INSURANCE RUNS OUT”** then, during a presentation to the Action Committee of 50, a group fostering development in the Bangor region. He was impressed with Fortress, noting that its Florida East Coast Railway was “investing in the Port of Miami and Port Everglades. They are committed.”

Getting through Lac Megantic

“The Lac Megantic situation is very emotional,” Bernhardt said. “Right now no oil unit trains, no hazmat” can operate through the town. “We need to impress upon them that we need that connection. Rail is important to them, their stuff goes west. For any future hope for going west [from Lac Megantic], they need the east-west movement.”

The eventual goal will be circumvention of Lac Megantic; Bernhardt estimated that cost as $40-50 million. “We are talking to the province and Transport Canada. We’ll be soft on this for awhile, before any hazmat traffic begins. It is important that happens at some point in time.”

Financial assistance to Fortress

While nothing is promised to Fortress for its startup, “we will meet with them and talk about those investments. If we invest, it will support economic opportunities and the shippers in Maine.” Bernhardt had no estimate of...
the amount of funds.

Asked after the meeting about the source of funds, he said he is considering IRAP, federal TIGER funds, and other programs. He did not think he would seek new bond funding. \{ANR&P coverage\}

**SEARSPORT: THE FUTURE**

29 January, Bangor. *A MEETING OF TRANSPORT OFFICIALS, SHIPPERS, TERMINAL OPERATORS, AND OTHERS CALLED FOR DREDGING* in Searsport Harbor to improve access to the existing two piers at Mack Point. The meeting, convened by the Action Committee of 50 [see above], heard from Jim Therriault vice-president materials handling of Sprague Energy, MDOT Commissioner David Bernhardt, and Captain David Gelinas, head of the Penobscot Bay Pilots.

**JIM THERRIAULT ON CURRENT OPERATIONS**

Therriault described current operations at Mack Point.

**Types of materials handled**

Most traffic comes inbound, Therriault said. Parties are working to increase outbound traffic – see pellets below.

**Liquid bulk.** [In 2005, Sprague was working to acquire the assets of the former defense fuel farm. Sprague owned the land, and leased it to the US Air Force, which built the tanks and a 200-mile pipeline to deliver fuel to Loring Air Force Base near Caribou – see 05#08B.] Sprague ended up owning the tanks more than a decade ago. “It's not always used,” said Therriault.

Irving Oil leases its tank farm, outlined on the map, for 90 years from the state. [In 2003 the state purchased three parcels of land from the bankrupt Bangor & Aroostook estate with tanks leased to Irving; the state continued the leases to Irving. See 03#07A.]

Sprague in past years would load out 15-20 rail cars out a day. Now MMA does about that many railcars a week. “We are seeing rail come back,” said Therriault, due to the price of diesel. He was greatly encouraged after “spending a few hours with Fortress before their bid [see 14#01A]: ‘They had ideas of things which could be done.’”

**Liquid bulk pier.** Sprague acquired the bulk pier in 1999, as part of a broad deal.² It operates it on behalf of its own cargoes as well as other users, principally the Irving tank farm.

**Break bulk/heavy lift.** Therriault noted that “we have not moved lumber for a long time.” The market is finally coming back, though Sprague has no export contracts yet. At this point, heavy lift consists of wind turbine parts, some of which can be seen in the aerial photo.

**Dry bulk/break bulk pier.** The State completed rebuilding this in 2003. Sprague operates it, and has an option to purchase.²

**Additional space**

Therriault pointed out that in addition to the already-occupied land, the land which DCP Midstream was proposing to use for its propane tank is open for use, about 40 acres [see map in 12#02B].

On adjacent Kidder Point, location of GAC Chemical [see 13#01A MMA Future] lie another 100 acres which could be developed, and connected to the Mack Point docks by rail.

[Though Therriault did not mention it, Searsport also has acreage available on Sears Island, the topic of

² The Bangor & Aroostook Railroad sold the break-bulk pier (aka the BAR Pier) and 12 acres of land – some underwater – to Sprague for about $4.5 million, with Maine Port Authority financing covering also the $12 million to rebuild the pier. When Sprague has paid off the 30-year financing, Sprague will acquire full title to the pier. The project began with the rebuild of the BAR Pier and proceeded to a rehab of the Sprague liquid bulk pier at a cost estimated in 1999 of $2.5 million. [See 99#15.]
a Captain Gelinas op-ed piece. See future issue.]
Potential traffic: torrified wood
Therriault described an interesting move from Millinocket to ships at Mack Point. Thermogen will load torrified-wood pellets produced into bottom-dump hopper cars. The MMA-successor railroad will rail the cars to Mack Point.

Using a newly-installed under-car conveyor to unload the cars, Sprague will employ conveyor segments and a telescoping stacker, already on site, to move the pellets into pile in one of the Rubb buildings.

When the ship arrives, Sprague will use the CBH system [see box] to move the pellets to ships in the 30,000-50,000-ton capacity.

DAVID GELINAS AND THE NEED FOR DREDGING
Captain Gelinas, as well as the panel coordinator David Cole, Bernhardt, and Therriault underscored the need for dredging. Bernhardt reported that no maintenance dredge of the Searsport channel has occurred since it was first dredged in 1964 to 35 feet. The operating depth has decreased to 31 feet. The US Army Corps of Engineers has received many public comments about the proposed dredging to 40 feet. The Corps will present a report to the Civil Works Review Board in June 2014, and expects a final report in December 2014. Assuming approval, Congress will authorize the maintenance, and, proponents hope, the $8 million federal share for the dredge. The state has passed a bond issue which included $3 million as the state share.

Need
Gelinas noted that the controlling depth at the break bulk pier is 40 feet. If ships wait for a high tide, they can traverse the channel and reach the piers. But as Therriault noted, with charter costs at $15,000 to $75,000 a day, that wait is costly.

Moreover, even at high tide some ships which once got to the piers can no longer do so. Gelinas showed a photo of the Baldock, a 802-foot long ship which called in 2008 with 75,000 tons of cargo for Thomaston [the Dragon Cement plant there burns petcoke – editor]. Its 39-foot draft can no longer fit.

Limits
Not only has the channel silted in. Insurance underwriters, vessel owners, operators, and ship captains in the last

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3 The U.S. Army Corps of Engineers was authorized to conduct a study of Searsport Harbor, Searsport, Maine existing Federal Navigation project by the House Committee on Transportation and Infrastructure by Resolution adopted 26 July 2000. The study began with the preparation of the Reconnaissance Report completed in August 2004. The report identified the Federal interest in continuing to the Feasibility Phase. The cost sharing agreement for the Feasibility Phase with Maine Department of Transportation was signed in December 2005 and the Feasibility Phase initiated in 2006. The Feasibility Phase is cost shared 50 percent Federal and 50 percent non-Federal. [Corps website, http://www.nae.usace.army.mil/Missions/ProjectsTopics/Searsport.aspx]

4 The MDOT Work Plan, page 141, calls for expending the $3 million in 2015-2016. [text from MDOT website] The bond issue, passed in November 2012, said the $3 million in state funds would match $10 million in federal funds. See 12#04B and 12#05B.
five years began to require a minimum underkeel clearance of 10% of the draft. Thus the ship with a 39-foot draft needs 43 feet of water. Adding the 10-foot tide above the 31-foot channel no longer suffices to dock the ship.

Ships have gotten larger, though their length remains the same. Their width, their draft, and their freeboard (waterline to deck) have all increased. {ANR&P coverage}

Dredging of berths: paid for by owners
The Corps report stated: 'In addition to the Federal navigation improvement project, two berths located at Mack Point are also proposed to be dredged to accommodate the deeper draft vessels. They are the berth on the east side of the State Pier and the berth on the east side of the Sprague Pier. The State Pier (dry cargo) is owned by the Maine Port Authority and the liquid cargo pier by Sprague Energy. Approximately 31,000 cubic yards of material would be dredged from both berths to a depth of 43 feet (plus up to two feet of allowable overdepth). The berth owners would be responsible for all costs, required sediment testing and associated permits.' {Corps

[BULK EXPORT SYSTEM
Sprague is preparing to use a new system to load bulk for export, rather than the traditional ways of a ship loader conveyor [Eastport just installed one – see 09#12A ], or a rotating line of trucks emptied by a bucket from the truck to the hold.

The port already has a mobile harbor crane belonging to the Maine Port Authority, acquired in 2012 [see 12#02B] following a TIGER grant from the USDOT Maritime Administration [see 10#02A].

For two million dollars from the bond fund, the Maine Port Authority is acquiring a RAM revolving spreader [see graphic from CBH (containerized bulk handling) Group] for the mobile harbor crane. This can lift a 40-foot container, loaded with for example pellets, off a flatbed, lower it into or over a hold, and revolve the container to dump out its contents. Therriault said the system can hoist, dump, and return to the flatbed, one container every two minutes, moving bulk "as fast as using a heavy industrial-scale ship loader."

Sprague believes it needs fewer than 12 containers, built by ISG, specialized for moving wood pellets. Storing the pellets in stacked containers (an option shown in the graphic), wrote Therriault, 'would require upwards of 1,000 containers;' {e-mail to ANR&P 4.Feb.14}
Diversified Product Offerings: Searsport, Maine

Summary Specifications

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30-day public notice for comments, 5.Apr.13}

CRUDE OIL THROUGH MAINE*

3 February, Augusta. **FIGURES REPORTED TO THE MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION** show that Pan Am moved only the equivalent of one 100-car unit train through Maine in the last four months of 2013, while MMA moved nothing. {e-mail to ANR&P}

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PAN AM/PORTLAND: RAIL ACCESS*

29 January, Bangor. **"THE TRACK TO THE INTERNATIONAL MARINE TERMINAL WILL BE BUILT THIS SUMMER"**, said Nate Moulton, MDOT rail administrator, in a conversation after the Action Committee confab. {ANR&P discussion}

In spring 2013, Pan Am President David Fink expected construction by summer 2013. Work was delayed while the parties concerned reached agreement on sale of property and property rights to permit rail once again past the Casco Bay Bridge [see map in 13#03B]

In November 2013, voters approved a bond bill which provided funds for the project. MDOT said the project would be ready to start by then, but it was not [see 13#11A].

MASSACHUSETTS

MASSDOT-PAN AM: DOUBLESTACK

7 February, Boston. **THE AGENCY HAS NOT YET MADE AN AWARD ON THE PATRIOT CORRIDOR PRELIMINARY ENGINEERING**, reported spokesperson Sara Lavoie. 'The procurement is still active. We do not have a solid date at this time when the process will be completed.' {e-mail to ANR&P}

Bids closed on 22 November [see 13#11B] for the estimated $3 million contract to engineer full doublestack from Mechanicville to Ayer.

GU: LIMITS v GRAFTON ON PROPANE*

27 January, DC. **THE STB DECIDED TO OPEN A PROCEEDING ON GU'S PROPOSED PROPANE FACILITY.** On 24 July 2013, GU, as requested by the Massachusetts Superior Court [see 13#07B], asked the Board to rule on whether federal pre-emption covered its proposed facility. The Town of Grafton argued that since the facility was apparently funded by others, it did not fall under the facilities pre-empted as owned by the railroad and an integral part of rail transportation.

The STB instituted a declaratory order in the proceeding. '[A] controversy exists as to whether the G&U would be the financier, owner, and operator of the proposed transload facility and whether the Town’s enforcement of state and local permitting and preclearance statutes and regulations in connection with the facility is preempted…'

GU was directed to submit additional information and arguments by 28 February. A Town reply and comments from other interested persons are due by 20 March. {STB website, decisions page, Docket No. FD 35752}
GU: ADVICE v GRAFTON ON RAIL YARD*

27 January, DC. THE STB OUTLINED THE LIMITED AUTHORITY THE TOWN OF GRAFTON MAY EXERCISE OVER THE PROPOSED GU RAILYARD in a decision issued this day. GU on 25 October 2013 asked for a declaratory ruling [see 13#10B].

Authority to eliminate controversy

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to eliminate controversy or remove uncertainty in a matter related to the Board’s subject matter jurisdiction.

We have received evidence and argument from the parties on the reach of federal preemption in connection with the proposed rail yard. While Grafton acknowledges that its preclearance regulations and permitting requirements are federally preempted, the parties have not resolved the limits of federal preemption as it pertains to the Parcel (e.g., what type of state and local statutes, regulations, and other requirements are not preempted, and what information G&U may reasonably be expected to provide to the Town.) Therefore, we will issue this declaratory order to provide guidance to the parties to the extent the record before us permits.

Guidance to Town and GU

In interpreting the reach of...preemption, the Board and the courts have found that it prevents states or localities from intruding into matters that are directly regulated by the Board (e.g., rail carrier rates, services, construction, and abandonment).

It also prevents states and localities from imposing requirements that, by their nature, could be used to deny a rail carrier’s ability to conduct rail operations. Thus, state or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements, are categorically preempted as to any facilities that are an integral part of rail transportation. See Green Mountain R.R. v. Vermont, 404 F.3d 638, 643 (2d Cir. 2005).

‘...the Board has stated that it is reasonable for states and localities to request rail carriers to: (1) share their plans with the community when they are undertaking an activity for which another entity would require a

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*Readers may wonder whether other areas of the country suffer from as much local attack upon railroads as do New England and the New York region, and particularly Massachusetts. I believe the answer is “no” and the decision here illustrates that. In addition to citing Green Mountain, the Board also cited Boston & Maine Corporation—Pet. For Decl. Order, FD 35749 (STB served July 19, 2013); Boston & Maine Corporation & Town of Ayer (Ayer), 5 S.T.B. 500 (2001), reconsideration denied (STB served Oct. 5, 2001), 330 F.3d 12, 14 n.2 (1st Cir. 2003); Borough of Riverdale—Pet. for Decl. Order—N.Y. Susquehanna & W. Ry., FD 33466, slip op. at 2 (STB served Feb. 27, 2001). And of course we still await a ruling on New England Transrail. Do we suffer from excessive NIMBYism, or overcrowding, or aggressive railroads, or all three? Editor
permit; (2) use state or local best management practices when they construct railroad facilities; (3) implement appropriate precautionary measures at the railroad facility, so long as the measures are fairly applied; (4) provide representatives to meet periodically with citizen groups or local government entities to seek mutually acceptable ways to address local concerns; and (5) submit environmental monitoring or testing information to local government entities for an appropriate period of time after operations begin. See Ayer, 5 S.T.B. at 511. Electrical, plumbing, and fire codes also are generally applicable. See Green Mountain, 404 F.3d at 643.'

**Board advice**

'Applying these well-established preemption principles here, we find that Grafton’s preclearance regulations and permitting requirements are categorically preempted by §10501(b) in connection with G&U’s construction and operation of an additional rail yard and storage tracks on the Parcel.

'Grafton, however, may request information from G&U and G&U’s cooperation so long as the Town’s actions do not unreasonably burden interstate commerce and/or hold up or defeat G&U’s right to construct and operate the new rail yard.

'We note, however, that G&U already appears to be providing the kind of access and information that, in cases such as Ayer, we have found reasonable for a locality to require. The Town has raised concerns about water quality with G&U and suggests that these concerns should be addressed here. But the record shows that the MDEP, an expert agency, evidently raised no concerns about the rail carrier’s plans after a visit to the Parcel and that G&U’s hydrologist found no water quality or aquifer concerns.

'We encourage the parties to work together to resolve any remaining water quality issues here, consistent with Board and court precedent interpreting § 10501(b), and any future issues that may arise in connection with the construction and operation of the new rail yard.' {STB website, decisions page, Docket No. FD 35779}

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**MC: SALT DEPLETED**

7 February, Taunton. TRUCKS ARE HAULING SALT FROM HERE TO LONG ISLAND, and other states outside New England, due to the winter severity. The salt arrives from American Rock Salt's mine in Retsof, New York, but only one in every three trucks arrives from New England, according to Pat Gregory, site coordinator for WeCare Organics which manages the ARS-owned site [see 13#12A]. The others come from New York, New Jersey, and Pennsylvania.

Pat's father, Wes Gregory, WeCare's chief executive, said “the whole northeast is depleted of salt.” The mine operates round the clock, producing up to its maximum of 125,000 tons per week.

WeCare moved 2,200 tons of rock salt on the 6th; the facility can deliver as many as 20,000 tons of rock salt in a week. As of 10h15 on the 7th, Gregory had 17,000 tons on hand, but could not predict how long it would last.

Scott Sears, a driver for Bridgewater Farm Supply, was parked in line to pick up another load of 24 to 25 tons to truck to a NYSDOT pile in Riverhead, New York. {Charles Winokoor in Taunton Gazette 7.Feb.14}

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**MARITIMES**

**CN: NBDOT SALE**

28 January, Montreal. CN'S UPDATE TO THE THREE-YEAR PLAN REMOVED SECTIONS IN NEW BRUNSWICK FROM THE 'DISCONTINUE' CATEGORY after the announcement that the provincial government would provide $25 million to retain some of the line [see 14#01A]. Changes from the 30 August 2012 announcement [see 12#08B]:

changed from discontinued to retained
- nine miles (0 to 9.00) of the Nepisiguit line
- two stretches of the Newcastle subdivision: 62 miles (milepost 0 to 62.00 - Nelson) and 25 miles (106-131)
- 8.35 miles of the Loggieville spur
Commentary
Via Rail says it will continue to operate the Ocean route from Montreal to Halifax as long as the Newcastle line remains open, but the Crown corporation is not interested in buying the short line, which requires costly upgrades. “We don’t have the financial resources to acquire or maintain this section of track,” Mylene Belanger, a spokesperson for Via Rail, said in an interview this day. “We’ll look into the commercial viability of all other alternatives for connecting Halifax and Montreal,” Belanger said, adding that Via Rail has used the line through Edmundston, New Brunswick in the past when the northern line was unavailable.

Years of deferred maintenance on the line has required VIA trains to reduce their speed to about 30 miles per hour, particularly in the middle section of the line, significantly lengthening the Ocean’s schedule, according to Transport Action Atlantic. Ted Bartlett, acting president of the public transportation advocacy group, said: “Unless there is some very quick intervention … there will be no more passenger trains east of Quebec City.”

Bartlett said the federal government has a responsibility to maintain the line and should pay to upgrade the short line. “This is a vital link for smaller towns and cities that don’t have a lot of public transportation. Long-distance passenger trains still make sense in the 21st century.”

He did not believe Via Rail would use the alternate route: “There are very few people living along that line. Many people getting on board are headed to or from communities on the North Shore.”

Five-month sale process
Jim Feeny, a spokesperson for CN, said the company will launch a five-month sales process [see box in 12#08B] “If at the end of five months nobody wants it, then we are legally entitled to discontinue the line and remove the rail,” Feeny said. He labelled the price of the rail as the main consideration. {Brett Bundale in Halifax Chronicle-Herald 28.Jan.13}

HALIFAX: WOOD PELLETS
4 February. Scotia Atlantic Biomass shipped its first load of wood pellets, 25,000 metric tonnes, aboard the bulk carrier MV Irma from the Port of Halifax to an unnamed customer in Ghent, Belgium this day.

2013 production went into storage
Scotia in early 2013 announced plans to fill two ships that year [see 13#03B]. A source close to the process said weather slowed both production and shipping, so that Scotia could only move its first 25,000 metric tonnes to the Halifax Elevator “recently.” {discussion with ANR&P correspondent Tom Peters}

More to go
Christopher Robertson, director and CEO of Scotia owner Viridis Energy, said a second load of about 28,000
tonnes is already sold to the same European customer. That shipment will depart Halifax in late June with a third shipment expected to leave Halifax near the end of the year. He expects the Middle Musquodoboit plant to produce 90,000 to 100,000 tonnes this year; production capacity is approximately 120,000 to 130,000 tonnes annually with annual revenues expected to be $20 million.

Expansion plans
“We would like to expand the plant we are in now. We also want to talk to the provincial government about getting fibre in another part of the province and maybe invest in another plant,” he said.

The Musquodoboit facility employs 26 people and produces pellets for industrial use; it may produce a premium pellet for home heating. Robertson sees an unlimited market in Europe for the wood pellets but he eventually “would like to keep this product here if we could. I think in two or three years that may be possible.”{discussions with Peters 3.Feb. 2014}

Pellets stored in grain elevator
Jeff Brownlie, the Halifax Grain Elevator’s manager of finance and administration, said the elevator is glad to have the wood pellets [see 13#03B]. ’We also have ourselves set up so we can receive 24/7 without having staff on hand to do it. Security personal hits a button and the receiving system will start up. The truck driver can unload and the product can be put into storage.’ Brownlie said. {email to Peters 4.Feb.14}
**HALIFAX: TRAFFIC INCREASE**

20 January. **CONTAINER CARGO TONNAGE AT THE PORT OF HALIFAX WAS UP 8.6% IN 2013 OVER 2012** according to figures released by the Halifax Port Authority: metric tonnes rose to 3,757,018 from 3,459,733 in 2012. TEUs rose 6.1% from 416,572 in 2012 to 442,173.

**But bulk and total down**

Overall, cargo tonnage over the port dropped 9.3% from 9,490,961 tonnes in 2012 to 8,608,044 tonnes in 2013. 'Bulk cargo throughput in 2013 is 4,401,304 tonnes a decrease of 21.2% when compared with 2012,' wrote spokesperson Lane Farguson.

'The Imperial oil refinery shut-down [see 13#06B] is one of the factors having an impact on this category of cargo. That being said, there has been a very positive development recently with Sterling Fuels [see below]

**Grain moving by rail**

'In the past, agri-product moving through the port has typically arrived via bulk carrier and that of course was counted in the overall bulk tonnage. What we are seeing now is that same cargo arriving but it is now coming by rail [see 13#08B] and that is having an impact on the overall bulk tonnage as well.' said Farguson. {e-mail to ANR&P correspondent Tom Peters 27.Jan.14}

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**HALIFAX: NEW FUEL PROVIDER**

17 January. **STERLING FUELS, WHICH SUPPLIES MARINE FUEL TO VESSELS IN THE GREAT LAKES, WILL FILL THE VOID LEFT WHEN IMPERIAL OIL SHUT DOWN ITS REFINERY** in Eastern Passage in 2013 and converted it to a storage facility. [See 13#06B.]

Imperial spokesman Merle MacIsaac said the Dartmouth refinery ceased processing crude in mid-September; it now receives refined products by ship. He declined to discuss details of supply or shipping arrangements.

A source told ANR&P several months ago that Imperial's marine fuel business was marginal. All the container lines calling Halifax source their bunker C elsewhere.

“We’ve said that the market for marine bunker is an international market. Users have the opportunity to source the fuel at various locations,” said MacIsaac. “We’ve also said this market has been shrinking and will continue to shrink in light of changing environmental regulations. We continue to supply the local market for marine fuel with marine diesel.” {e-mail to ANR&P correspondent Tom Peters 17&20.Jan. 2014}

Sterling plans

Sterling Fuels Limited of Windsor, Ontario will charter Algoma Central Corporation's fueling tanker *MV Algoma Dartmouth*, currently servicing the Halifax bunkering market. {Sterling release 16.Jan. 14}

Per Sterling Vice-President Adrian Mitterhuber, it will begin supplying bunker C fuel in Halifax via a tank barge hauling fuel to Halifax from the Great Lakes.

Sterling, part of the Miller Group, joins sister company McAsphalt Industries Limited, which has an asphalt tank farm in Eastern Passage across the harbour from Halifax.

Mitterhuber said Sterling is looking at expanding that tank farm for its fuel products. Long-range, Sterling wants to receive fuel by ship.

Ships use bunker C because it is a heavier and much cheaper fuel; Sterling will blend it to suit vessel engine requirements.

Mitterhuber agreed the marine fuel business was slow. However, he said the company is confident, based on its experience and success in the Great Lakes, that it could build a customer base in Halifax and meet their fuel needs. {discussions with ANR&P correspondent Tom Peters 22.Jan.14}
Oceanex relieved?
Oceanex, which operates a weekly service between Halifax and St. John’s, said: 'Captain Hynes and Oceanex are delighted that Sterling Fuels will be providing this fuel option to Atlantic Canada. We wish them every success with this new business venture.' {Lori Caines of Oceanex in email to Peters 17.Jan. 2014}

Oceanex purchased its bunker C from Imperial for its vessel MV Sanderling. Oceanex Executive Chairman Sid Hynes said in October he was looking at a number of fuel scenarios. One option was to take the Sanderling to Portland Maine for refueling, which obviously would have been more costly. (Sid Hynes in discussions with Peters 17.Oct. 2013)

RAIL FREIGHT FACILITIES

Described in this issue.

American Rock Salt Taunton (MC, Massachusetts) Trucking to New York area.
Eimskip (Pan Am, Maine) Track coming this summer.
GU propane (GU, Massachusetts) STB will look at extent of pre-emption.
Sprague Searsport (MMA, Maine) Only 15-20 carloads a week.
Tafisa (MMA, Quebec) How the facility used trucks during the rail shut-down.