**Regional**

**CMQ:** Gile letters to customers.

**NECR-PAS:** Pan Am may release six propane cars held in E. Deerfield. NECR threatens bankruptcy. **++**

**NECR-PAS:** NECR response filed at STB.

**New York**

**NYA-LIRR:** Strike averted. Brookhaven RT note.*

**NYA:** New, 30-day waste move. Maps. **++**

**NYA:** NYSDEC awards permit. More on move.

**BRT:** Work on parcels enjoined pending trial.*

**Québec**

**CMQ-CP:** CP starts interchanging with CMQ in Saint-Jean.*

**CMQ-CN:** CN interchange moves to Sherbrooke.

**Connecticut**

**New London:** Brief update from Port Authority.

**Maine**

**Pan Am-Portland:** Planning Board okays intermodal terminal.*

**South Portland:** City Council passes ordinance barring crude oil exports. **++**

**Portland:** Update on Eimskip traffic.

**Massachusetts**

**HRRC:** MassDOT buys trackage in the Commonwealth. Deal to STB.*

**New Hampshire**

**Pan Am:** Court appeal of Sea-3 permit awaits

Newington Zoning Board of Appeal action. Scarano comments on track upgrades. **++**

**Rhode Island**

[No report.]

**Vermont**

**CMQ:** Work on Newport yard.

**Maritimes**

[No report.]

**Rail Shippers/Receivers**

A cross-reference to companies mentioned here.

**People, Positions, Events**

**Editorial**

Tar sands or all crude oil? The need for a wider view.

FROM THE PUBLISHER

Thanks to NYA

James Bonner again hosted me for a tour of Brooklyn and Queens customers, and a talk about the baled waste question. The latter became the major story for this issue. Stories about other NYA customers will follow in future issues, as well as another on waste by rail out of Long Island.

Thank you, Mr. Bonner.

- Chop Hardenbergh Next formal issue 5 Aug
July 16, 2014

Dear Valued Customers,

Much has happened on the property of Central Maine and Quebec Railway in the last two months. Beginning with the closing of the US property on May 15, we then dedicated the first train service in almost a year between points in Quebec and Maine/New Brunswick on June 17. Additionally and most recently we closed on the Canadian property effective June 30. Even before the closings, the pace of productive activity has been exceptional and not surprisingly the speed has accelerated over the last two months. Much has been accomplished in a relatively small time period but there remains significant work ahead of us both in terms of making infrastructure improvements and regaining our position in the market place.

First, we’d like to thank you for your support during the transition period. Your encouragement, advice and counsel, and willingness to work with us from a commercial perspective has been enormous and extremely gratifying for all of us on the new management team. We’ve met with many of you already and plan to meet with more during the coming months. Secondly, we’d like to offer an apology to many of you who have been affected recently from the altering of our interchange points with CP and CN at St Jean, PQ. Our certificate of fitness, which is provided to us by Canadian Transport Agency, does not provide for running rights over another railway, which is how those interchanges were made possible when MMA operated the railway. As many of you know by now the interchange with CN is currently being made in Lennoxville/Sherbrooke, PQ in lieu of St Jean. We now have an interim agreement with CP to make the interchange in St Jean as we work together to finalize a more optimal long-term solution.

We have an extremely talented and experienced management team in place to support the operations and whose primary goal is to focus on providing consistent quality service to our customers. My close associate, Ryan Ratledge, our Chief Operating Officer, leads the team. We both want you to know that we’re going to spend millions of dollars this summer and fall to make significant infrastructure upgrades in Quebec and Vermont, which will in turn improve our operating efficiencies dramatically. We’ll plan to share more updates about those improvements with you later this summer.

On behalf of Ryan and all of my fellow workers at CMQ Railway we thank you again for your support and look forward to getting to know you better and discussing how we can assist your respective businesses to become more efficient and profitable.

Sincerely,

Jay Lander  
Chief Commercial Officer  

15 Iron Road, Hermon, ME 04401  (207) 848-4200  (207) 848-4232 fax
NECR-PAS: “COLLATERAL DAMAGE” ++

Note: PAS spokesperson Cyndi Scarano on 22 July said the propane cars have moved. Calls and e-mails to Rymes about their destination were not returned by publication time.

10 July, West Lebanon. **PAN AM 'BELIEVES] WE HAVE REACHED A TEMPORARY SOLUTION' ABOUT THE SIX CARS OF PROPANE HELD IN EAST DEERFIELD** since 10 June, reported Cyndi Scarano, Pan Am executive vice-president. She was responding to the below comments of John Rymes of Rymes Heating Oils [see full text of Scarano remarks below].

Reached this morning, Rymes said he had heard nothing about the solution. “Of course not. Do you think they would reach out to me?” He was discouraged that “only after have I reached out to the press” did Pan Am find a solution. “They couldn't do that four weeks ago?” {ANR&P discussion}

Background
Rymes's disputes with Pan Am go back to 2002, when he won the right to have NECR service his propane facility in Claremont [see 02#07B], subsequently sold [see 05#06A]. He started receiving propane in West Lebanon, on the CCRR, in 2011 [see 11#01B], via interchange with NECR.

In April 2013, his supplier for unknown reasons waybilled the propane via Pan Am, which made the delivery to White River Junction [see 13#04B].

New snafu
In late spring 2014, Rymes' supplier again waybilled propane, six cars of it, via PAS to White River Junction. These cars reached East Deerfield in the midst of the PAS-NECR dispute, wherein NECR is requiring Pan Am to operate at 25 miles per hour, and supply waybills for all cars [see 14#06B].

Pan Am, reported Rymes, refuses to supply the waybills to NECR, or to Rymes, or to send the cars via an alternative routing to White River Junction. “They are saying they cannot move the cars, period.”

Rymes is looking at $180,000 of propane sitting in East Deerfield, and is running out in West Lebanon. He has had to supply his customers either from his other facility in North Stratford on NHCR, or truck from the pipeline terminus in Selkirk.

“The same old Guilford” [Pan Am disputes this, see text of letter]
Rymes reported that he too heard that Pan Am has turned over a new leaf. His brother Tom took a office-car trip with Pan Am and came back optimistic. He believes that if Plains LPG (the PAS customer in Claremont1) or Dead River (the VRS customer in Riverside whose cars Pan Am interchanges to VRS – see 14#04B) had a problem, Pan Am would deliver the cars. Because of the past, though, “they won't help me.”

“Something has to be done, if we want rail to expand. The 'new Guilford' is...[behaving] exactly like the old Guilford.”

Efforts to resolve the problem
Rymes reported his efforts on three fronts:

NECR. He has talked to NECR “about 15 times.” They will move the cars if PAS supplies the waybills.

Supplier. The supplier is also working on the problem. Rymes did not know whether it had contacted NS, the other half of the PAS joint venture.

STB. Rymes has talked to the STB more than once. {ANR&P discussion}

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1 In 2005, Plains bought Rymes's Claremont propane facility [see 05#06A]. PAS started serving the facility in November 2013 [see 13#12A Vermont].
PAN AM COMMENT

Dear Chop:

Pan Am has been actively working for over a month to find a solution to the waybill issue, only to be told time and again by GWI that they will not allow cars to move to White River Junction without revenue waybills being provided. While GWI claims that this requirement is related to haulage, Pan Am has repeatedly informed GWI that the Rymes cars are not haulage cars only to be told “no” again and again. So, contrary to the tone of your article, it has been Pan Am and not GWI that has been trying to resolve this situation. The good news is that we believe we have reached a temporary solution that will result in delivery of these cars to Rymes while the underlying dispute is being considered by the Surface Transportation Board.

'NECR may have to consider bankruptcy'

Scarano mentioned that NECR admits that Pan Am is doing better, and NECR is losing money:

What is troubling about the article is the reference to the “The same old Guilford”, which is absolutely incorrect. Quite simply, we believe that this dispute would not exist if Pan Am did not offer competitive service and pricing options which have led shippers on the Conn River line to elect to utilize Pan Am, which unfortunately have also likely contributed to the recent operating restrictions imposed by GWI. Indeed, GWI officials have acknowledged that Pan Am has been besting them competitively, and that as a result the NECR may have to consider bankruptcy due to decreased revenue from the Conn River line. While it is disappointing that GWI views the world this way, Pan Am did not create the problem and is merely maximizing the utility of rights granted to it long before GWI came along. The real question, therefore, seems to be why Rail America and RailTex before it could successfully operate the Conn River line subject to the TRO, while GWI apparently believes it cannot.

To simply say that Pan Am is refusing to provide waybills to GWI, and is therefore the problem is overly simplistic and somewhat misleading. This is really an issue of which railroad can best compete to provide customers with the best service and pricing options. On that issue, Pan Am believes that it can effectively compete with GWI on the Conn River line, and welcomes such competition that will ultimately benefit rail users. However, for true competition to exist the playing field must be even and to allow GWI to utilize arbitrary operating restrictions to reduce customer options is unacceptable and contrary to the TRO. Again, the issue comes down to a simple question: Why is GWI imposing these restrictions now, when no other operator has found them to be necessary before? Until that question is answered truthfully, our concern is that customers on the Conn River line will continue to be adversely impacted by GWT’s unilateral efforts to alter the competitive balance created by the TRO.
STB must act

Given the continued intransience of GWI, we believe that only an STB decision can resolve these issues fully, and we will accordingly await the Board’s response.

Sincerely
Cynthia Scarano
Executive Vice President Pan Am Railways

NECR v PAS: NECR RESPONSE
17 July, DC. NECR ARGUED THAT ITS BEHAVIOUR WAS NOT GERMANE TO ITS SEEKING A PRICE INCREASE, in its response to Pan Am's Motion to Show Cause. Two reasons: the Board's rules of procedure do not provide for a 'motion to show cause', and NECR is not seeking to interpret the Trackage-Rights Order (TO).

No response to speed restriction or waybill requirement
In a footnote, NECR ignored Pan Am's facts: NECR is restricting its track speed, and requiring waybills:

'NECR is not herein responding to the substance of the allegations by PAS that NECR has violated the current terms of the Trackage Rights Order ("TO") issued by the Interstate Commerce Commission ("ICC") in Amtrak - Conveyance of B&M in Conn River Line in VT & NH, ICC Finance Docket No. 31250, 6 ICC 2d 539 (1990) ("Amtrak II"). NECR denies the allegations, and will respond if the Board were to issue an order to show cause, or in response to a properly instituted proceeding.'

Not proper procedure
NECR argued:

'PAS refers to its pleading as a "Motion to Show Cause." By placing the term in quotation marks, PAS tacitly acknowledges that there is no such procedure provided for in the Board's regulations. A review of the PAS Motion makes it clear that PAS is simply requesting that the Board interpret certain provisions of the TO. As PAS is well aware, questions of this nature are generally addressed with the Board through a separate declaratory order proceeding.

See Boston and Maine Corporation and Springfield Terminal Railway Company v. New England Central Railroad, Inc., STB Finance Docket No. 4612 (complaint and petition filed November 9, 2004) (predecessors of PAS sought Board interpretation of certain liability provisions of the TO); Rymes Heating Oils, Inc. - Petition for Declaratory Order, STB Finance Docket No. 34098 (petition filed November 13, 2001) (shipper sought Board interpretation of the service provisions of the TO with respect to a newly constructed sidetrack). A separate proceeding in accordance with established Board regulations, would require PAS to fully set forth its claims and allow for the development of a full record on which the Board could make a reasoned decision.

Not within scope of NECR filing
Second, NECR argued:

'The relief requested by PAS in its Motion is clearly not within the scope of the relief sought by NECR in this proceeding. NECR seeks, in accordance with the rights granted by the Interstate Commerce Commission ("ICC") in imposing the original TO, to have the Board establish new terms and conditions for future operations...
by PAS under its trackage rights over the Line.... (NECR only seeks to exercise the reopening rights set forth in Section 2.2.)

'On the other hand, the PAS Motion seeks interpretation of the provisions of the current TO and how they apply to PAS's current operations. The relief sought by the respective parties is clearly separate and distinct, and there is no reason for the Board to consider the relief requested by PAS in the course of this proceeding.

'PAS's goal in filing its Motion in response to the NECR Request is clearly to delay the implementation of the procedural schedule requested by NECR in its Request (see PAS Motion at 1, 6). The relief sought in the NECR Request not dependent on, and is unrelated to any relief the Board might grant in response to the relief requested in the Motion.' {STB website, filings page, Finance Docket 35842}

Mini-editorial
Contrary to NECR's contention that “the relief sought is separate,” the filings thus far show that NECR is unhappy with Pan Am's taking traffic from NECR, and has responded with one legitimate tactic (seeking an increase in trackage rights fees) and two illegitimate ones (restricting PAS operating speed, and requiring waybills). The NECR effort is all of a piece to fight back.

The Board should ignore NECR's procedural niceties and take on all three issues concurrently, now. Indeed, it should call the chiefs of each railroad to DC, telling PAS that it will direct NECR to cease its blockade tactics in return for PAS raising the trackage rights fee. Give them 24 hours to cut a deal. Editor

NEW YORK

NYA-LIRR: NO STRIKE*
17 July, New York City. IF LIRR HAD STRUCK, NYA WOULD NOT OPERATE EAST OF JAMAICA. The unions months ago set the strike date as 20 July; the two sides reached tentative agreement on the 17th. {New York Times 16 & 18.July.14}

James Bonner, NYA director of sales and marketing, noted that without LIRR dispatchers, NYA cannot run on the lines with passenger service. NYA operates in Brooklyn and Queens on freight-only lines, and would continue to serve customers there.

In a letter to 'our valued customers, shippers, and partners,' Bonner wrote:

'Areas east of Jamaica are joint passenger and freight operation and therefore controlled by LIRR. As a result, we do not expect to provide service to areas east of Jamaica, which includes all of Nassau and Suffolk counties. As a result, you are strongly encouraged to maximize your inventory and explore alternative means of transport via whatever avenues available....

'For your additional consideration, there will be limited transload options available in Queens and Brooklyn to customers who require materials that can be handled without specialty equipment or permits.’ {e-mails to ANR&P}

BRT comment
Jim Newell, President of Brookhaven Rail Terminal [see below], stated, “Based on the strategic role the rail terminal has played over the last 12 months to reduce regional truck traffic, air emissions and roadway wear and tear, our calculations show that Long Island needs to be prepared to see a return of at least 185 truck trips if the strike lasts a week. That calculates to tons of engine emissions from heavy truck traffic and the obvious additional congestion on a road network that will be way past the breaking point.”

….Currently the Brookhaven Rail Terminal daily unloads items ranging from construction material to biofuels and has created jobs for 55 transportation professionals. It welcomes approximately 50 rail cars a week, some from as far away as Washington State as part of the transportation system that keeps Long Island’s commerce moving forward. {press release 16.July.14}
NYA: NEW, SHORT-TERM TRAFFIC ++

Note on sources of information. Most of the below comes from three articles in *Long Island Newsday* written by Sarah Crichton and Sophia Chang on 2, 3, and 11 July. Other information comes from other sources as indicated.

11 July, Brentwood. **ELM GLOBAL LOGISTICS WILL HOST AN MSW TRANSLOAD HERE FOR AT LEAST 30 DAYS**, under a deal struck among local, county, and state officials. Several representatives from the companies involved confirmed the agreement, which needs state approval. Special arrangement is needed to move the estimated 10,000 to 12,000 tons [100 to 120 carloads — *editor*] out of the eastern end of Long Island.

**No barge**

At one point in the talks (led by Karen Rae, former FRA deputy administrator and NYSDOT official [see 10#05B] now in Governor Andrew Cuomo's office), an industry representative suggested a barge, a source said. Officials vetoed the idea, recalling the fiasco of 1987 in which garbage was loaded on a vessel lacking authorization to land anywhere.

**Genesis of the problem: too much rail**

Burgeoning inbound rail at the Brookhaven Rail Terminal in Yaphank has cut down on inbound flatbed trailers, leaving many fewer for backhauling trash.²

Officials also pointed to the summer surge as tourists and seasonals flock to the East End, and heavy rains delaying cleaning in the spring. Michael White, an attorney who represents several Long Island solid waste service firms including Omni Recycling of Babylon, said at the beginning of July: “Heading into the holiday weekend, we have a real challenge, particularly out on the East End where if it's being collected, it's getting close to impossible to move it off the Island.”

Omni, one of the largest firms, has lined up railcars. Paul Victor, NYA president, said the railroad remained ready, willing and able to take the garbage. “It's obviously a crisis point and we'd like to help.” Jay Wallace, general superintendent, pointed out that railroads may not legally deny service to any customer. “All

² The news stories did not note the loss by fire of the Island Rail Terminal adjacent to ELM in October 2013. If the estimate of 50 cars a week originating at IRT [see future issue] is correct, then that played a significant role in the overflow of waste.
the DEC has to do is ask us. We could strike the agreement but we need the permit.”

If Omni gets the DEC permit, Eastern Resource as well as Progressive Waste Solutions would likely join in, sources said.

White noted: “This is a temporary solution to the backlog that’s developed. But it’s also clear a longer-term rail transport alternative for garbage is essential for Long Island.”

The garbage
Progressive Waste Solutions, a Canadian-based public company [see box], receives waste for the towns of East Hampton and Southold at facilities in Holtsville and Yaphank, baling and then wrapping it in plastic. As the facilities approach capacity, Progressive is turning away third-party carting clients.

The transload: two possible sites

ELM Global Logistics operates at 50 Emjay Boulevard in a Brentwood industrial zone with close access to the Long Island Expressway; it backs on to the eastern buffer of the Sagtikos State Parkway just south of the LIE. It does not have a license to handle waste [which explains the negotiation with NYS DEC].

Island Rail Terminal another transload, just north at 80 Emjay Boulevard, was handling C&D (NYS DEC Registration Number 52W125) and MSW (residential, institutional, and commercial, NYS DEC Registration Number 52T115). [NYS DEC database of active waste transfer stations] [The permits are reportedly no longer active, hence the need for a special permit from DEC.]

Dominic Testa of IRT said on 17 July that the operations are separate companies, not related. He referred questions to White. {ANR&P discussion} [See below.]

Lots of traffic
[ELM is usually switched daily, Bonner said.

Under the deal, the baled and wrapped waste will go into lidded gondolas. Some 40 are already enroute over CSXT, though NYA does not yet have an agreement on moving them. {e-mail to ANR&P 17.July.14}]

Other sites examined
By 3 July, sources could name several possible sites for the transloading. The following were considered and rejected [see map].
Hicksville. NYA operates a transload yard at 497 West John Street here. Its downside: the distance to dray from Holtsville and Yaphank.

[Bonner reported: 'Unity Fuels LLC, dba Grease Lightning is the major customer in that yard, with some other team track activity on a recurring basis (lube oil, brick, bentonite, asphalt sealant, etc).']

The covered hoppers viewed in the Bing aerial contain bentonite, Bonner said, for use lining landfills. {e-mail to ANR&P 17.July.14}

Yaphank passing track. Adjacent to the LIRR Yaphank depot. NYA could spot at least a dozen cars a day.

Gershow Recycling. In Medford, Gershow has considerable rail traffic, in a crowded yard.

Brookhaven Rail Terminal. Sills Road in Yaphank.

Eric Jakubowski, chief commercial officer at Anacostia Rail Holdings, NYA parent company, demurred when asked to name which site his firm deemed most appropriate on 2 July. “The New York & Atlantic Railway has only recently become involved and we're working with a number of partners to try to clarify the best options. A specific loading site has to be confirmed and that may wind up being a privately-owned site if it's shown that's the best site to handle the volume expeditiously.”

The rail
NYA will move the cars to Fresh Pond; CSXT will deliver them to ESI's Ashland, Kentucky Big Run landfill on behalf of ESI [see box and aerial].

Permitting
On 10 July, the Town of Islip Planning Board unanimously approved a special permit for Elm Global Logistics. The state DEC, which regulates waste, must provide a special dispensation for the 30-60 day operation, to
enable vehicle repair and additional parking. {Sarah Crichton and Sophia Chang in *Long Island Newsday* 2, 3, 11. July.14}

**NYA: BRENTWOOD GETS PERMIT**

18 July, Brentwood. **NYS DEC ISSUED AN EMERGENCY PERMIT TO USE ELM GLOBAL HERE** to remove MSW by rail, according to Michael White, the attorney representing Omni Recycling of Babylon. Next, CSXT, and EnviroSolutions which will receive the waste, must agree on the terms of movement

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**ESI’S KENTUCKY LANDFILL: LONG ISLAND WASTE RESTING PLACE**

ESI owns and operates the Big Run Landfill in Ashland, Kentucky; the state’s only rail-accessible landfill. Big Run is permitted to accept waste from counties in 11 states: Kentucky, Ohio, West Virginia, Indiana, Maryland, Pennsylvania, Tennessee, Virginia, New York, Connecticut and Massachusetts. The 225-acre site has a 30-year capacity that allows it to accept up to 1.5 million tons of non-hazardous waste annually; it has taken baled trash via a 3,000-foot rail spur since 2007.

Based on figures provided by the Boyd County Fiscal Court, Big Run accepts about 700,000 tons of trash a year, paying the county $1 per ton under a host county agreement.

ESI also owns the rail-served Copper Ridge Landfill in Capel, West Virginia. However, West Virginia limits its landfills to receiving a maximum of 50,000 tons per month and host county McDowell charges a $4 per ton fee.

**Containerized waste added**

In 2013 Big Run added a second rail spur for containers, built by Tri-State Rail and Salvage, also served by CSXT. {Carrie Stambaugh in *Daily Independent* 8.June.13 & 6.Sept.13}
and disposal of the excess baled MSW. NYA, said Bonner, will participate via the CSXT contract.

**Why not use Island Rail Terminal?**

Island Rail did handle C&D and MSW, but that facility burned in October 2013, White noted. Its permits were no longer in place [see other article]. “The owners are trying to sell the property and have no authority to operate.” In looking at property with the potential to handle the waste, “ELM was the better way to go.”

**Timing of the move**

Scott Cunningham at ESI, according to White, “anticipates getting the gons with lids to Oak Point or Fresh Pond” by the 21st, and to Brentwood by the 22nd. Hauliers will dray the waste from Eastern Resource in Yaphank, Progressive's Holtsville and West Babylon baling facilities, and the large Omni facility in West Babylon [see map], into ELM, and pull up next to a gondola. A loader will move the bales off the flatbed and into the gondola.

White anticipates moving 550 tons per day, or about 6 cars a day [the Island Rail contract listed cars as holding 85 tons – see future issue]. At 550 tons per day, 30 days' worth should cover the estimated 10,000 to 15,000 tons of excess baled waste.

White acknowledged “it's going to be close. “We're not giving up on getting trucks also.” Furthermore, “we can request, pending review, that DEC give us 30 more days.”

**Future rail move and site**

White said a benefit of the need to “scurry around and put pieces together” to make this temporary move is that over a longer term the waste handlers must “include rail capacity. “ Even when inbound truckers in New York City look for backhaul, the tolls and the fuel costs of getting out to the Island deter them.

The former Island Rail is a potential site. White said Omni Recycling in Babylon and its affiliates in Nassau County could create the terminal, and accept the waste from the other two major players: Progressive and Eastern Resource. “I am a problem solver, as is the president” of Omni.

“Right now Kentucky is the vision” for a landfill. Omni has good relations with ESI there, and Scott Cunningham. {ANR&P discussion; Bonner e-mail 21.July.14}

**NYA: BRT INJUNCTION ISSUED**

23 June, Brookhaven. "WHAT A WAY TO RUN A RAILROAD!" {Ballyhoo 1932} Gary Brown, United States magistrate judge, led off his opinion with that quote from cartoonist Ralph Fuller, then proceeded to criticize the Brookhaven Rail Terminal while issuing a preliminary injunction. Some excerpts:

**Summary**

'Before the Court is a motion by plaintiff Town of Brookhaven (the "Town") seeking a preliminary injunction to prevent defendants associated with the Brookhaven Rail Terminal collectively "BRT") from the continued excavation, removal and sale of sand from an environmentally sensitive, 93-acre site located in Yaphank, NY, purportedly in connection with the construction of a railroad facility. Defendants have resisted the Town's efforts to enforce regulations that would limit sand mining at the site, claiming that these operations are incidental to grading in preparation for the installation of a railroad spur that falls exclusively under the jurisdiction of federal authorities and hence outside the realm of the Town's regulation.

'At a two-day hearing [on 19 May – see 14#05A], the Town established that the anticipated removal of more than two million tons of sand from the site, which is located in a hydrologic recharge zone, presents a very

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3 One source counted Island Rail problems: A history of violations, the fire, and the lawsuit by Rail Solutions. No one wanted to stain the new move with those old problems. {ANR&P discussion}

4 EnviroSolutions Inc (ESI). Scott Cunningham serves as North East Regional vice-president. Previously he worked at USA Waste Services, and then Covanta Energy Corporation and American Ref-Fuel Company as director of business development, market area manager, business manager, and marketing manager in the waste-to-energy industry. {ESI website}
real risk of contamination to Long Island's sole source glacial aquifers. Moreover, plaintiff presented
overwhelming evidence that the lucrative sand mining operation, expected to generate revenues of $10 million
or more, appears entirely independent of any plan that defendants may implement to construct railroad
operations at the site, which plan has not advanced beyond a conceptual stage. As such, I find that the issuance
of a preliminary injunction barring defendants from further mining, removal or sale of sand or other material
from the site is appropriate....'

Sand mining the function
'In at least five instances during the hearing – even in response to a question from the Court – [defendants'
representative Daniel] Miller characterized the profit from the removal and sale of sand from the site as a
"minor consideration." This claim is belied both by the information that emerged during the hearing as well as
the actions of Miller and others associated with defendants. By his estimation, defendants stand to profit at least
$9-10 million from the sale of sand removed from parcels B and C (with virtually no capital investment), a
figure Miller readily provided. [See map in 14#04B.]

'Ironically, when asked by the Court about the profits from the existing railroad operation on parcel A,
Miller had more difficulty producing a figure, but ultimately conceded that the current railroad operation
produces approximately $8-10 million in income following a $40 million capital investment.

Not track construction
'As relevant herein, the STB has exclusive jurisdiction over "the construction, acquisition, operation,
abandonment or discontinuance of spur, industrial, team, switching, or side tracks, or facilities." If the evidence
presented showed that the operations being carried out on parcels B and C were related to one of these
activities, the case might present a close question. However, the evidence established no such relation.

'As described above [omitted], the evidence presented indisputably demonstrates that defendants have
engaged in wholesale mining of the parcels [see photos in 14#04A] entirely independent of any rail construction
or development.' {page 15}

Plans unclear
'In fact, on this record, no reasoned determination can be made regarding the whether defendants' intended plans
comprise rail-related activities, as the defendants have presented divergent concepts for the parcels – including
various track configurations and purposes, from a refrigerated transloading facility to a mini-passenger service
for patrons of a non-existent Native American casino.

'What can be said with certainty, however, is that the mining of sand from the parcels has been
demonstrated to be entirely independent of any rail-related activity.

'Finally, even assuming, arguendo, that the evidence presented some support for a bona fide railroad
construction, given the nature of the Town's regulations, and the attenuated connection between the conceptual
railroad plan and the mining activities, a serious question would remain as to the merits.

'Here, the Town's regulations prohibiting sand mining and screening are intended to protect public health
and safety through the conservation of natural resources and preservation of drainage patterns, which safeguard
drinking water, see Brookhaven Town Code 53-1, appear to be clearly defined and non-discriminatory. Thus,
there is, at a minimum, a serious question on the merits.

'And the balance of hardships tips decidedly in plaintiff's favor: the Town's efforts are aimed at
preventing environmental disaster. The only hardship articulated by defendants is the temporary loss of sand
mining revenue, as their claims of construction delay, given the absence of any demonstrated effort to
implement their rail expansion effort, prove unavailing.

'This determination is only heightened by proof that defendants made inarguable efforts to conceal
their activities from the Town, which has acted with reasonable diligence under the circumstances. Therefore,
the entry of a preliminary injunction is warranted.' {page 18} {STB filing by Town 24 June 14, filings page,
Finance Docket No. 35819, appending Brown decision in Federal Court Eastern District of New York docket
2:14-cv-02286-GRB Document 63 filed 23 June 14}
“Very good customer”
James Bonner, NYA director of marketing and sales, said on 15 July he did not want to comment on the dispute with the Town. “They are certainly a very good customer of ours.” {ANR&P interview}

**QUEBEC**

**CMQ-CP: CP TO ST-JEAN++**
9 July, Saint-Jean-sur-Richelieu. CP AND CMQ INTERCHANGED TRAINS AT THE SIDING IN IBERVILLE, east of the Richelieu River, for the first time. CP delivered a 7000-foot train for Farnham, while CMQ was waiting with 4400 feet in the siding. {Francois Jolin e-mail to ANR&P 10.July.14}

**Confirmation**
Giles confirmed on 10 July that CMQ is not operating the short distance on CP to the interchange track [see St.Jean map], and CMQ has moved the CN interchange to Sherbrooke via the SLR. {e-mail to ANR&P}

**More on interchange**
For the 15 July interchange, before crossing into CMQ territory, CP stopped by Plastpack and Portec. CMQ came from Farnham the night before in order to bring cars for CP and work in the industrial park at Iberville.

![St.Jean-sur-Richelieu, CN and MMA interchange, showing local customers. (ANR&P)](image)

Black line below 'MMA to Maine' shows siding in Iberville where CMQ and CP interchange. Blue MMA interchange track has lost the switch to CN – see photo.

**CMQ-CN: TO SHERBROOKE**
10 July. CN AND CMQ NOW INTERCHANGE IN SHERBROOKE VIA SLQ. As the St.Jean map [from 10#03B] shows, MMA formerly interchanged with CN in Saint-Jean using the CP trackage rights. SLQ then
moves to Richmond, where it interchanges with CN.

As CMQ no longer only has operating rights west of the Richelieu River, where its ownership ends, it is forced to move the interchange with CN.  

Of note: CN and CMQ do have an interchange in Sainte-Rosalie, but because the St.Guillaume subdivision needs work [see 14#06B], that it is not workable.  {editor}

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5 Note that the Giles letter in Regional did not say that he is talking with CN about resuming the interchange in St.Jean.
SLQ-CN car counts way up
Rail observer Derek Booth\(^6\) reported about the Sherbrooke interchange [see map]: 'Formerly there were perhaps ten cars or fewer on a single siding. Now, on some days, the three sidings are filled with up to forty or so cars. Formerly most of the transfer traffic was for Eka-Nobel (sodium chlorate) near Magog. Now there is a mix including LPG cars.'

On 20 July Booth observed '17 cars in the transfer track (SLA to CMQ) in Sherbrooke, mostly sodium chlorate-related cars but also two LPG tankers, and one boxcar.' {CMQ e-list 12&20.July.14}

How the interchange happens
'The CMQ normally keeps a switcher in Sherbrooke which runs daily (also switching the Eka-Nobel plant), usually five days a week, from the CMQ Sherbrooke yard down to the SLQ diamond [see map] and onto SLQ trackage to the interchange point. It sets off and lifts, then returns to the CMQ yard by the same route.

SLQ uses a local out out of Richmond as far as Waterville (or Coaticook if necessary) which does most of the lifting and setting off at Sherbrooke. {Booth e-mail to ANR&P}

**CONNECTICUT**

**NEW LONDON: UPDATE**

16 July, Newington. THE CHAIR OF THE NEW LONDON PORT AUTHORITY PROVIDED A BRIEF ON THE PORT OF NEW LONDON to the Connecticut Maritime Commission. Captain Jesse Marshall, the chair, is the senior captain of the Fisher Island Ferry.

The port has a controlling depth of 40 feet with the easiest in/out access of any Connecticut port, Marshall said. The harbor contains two ferry services, a large tug fleet and operation, a commercial shipyard, a large vessel construction facility, commercial fishing fleets, and two lightering terminals (DDLG and the former Hess facility). Commercial cargo ships and cruise ships make calls at the State Pier Facility.

Fresh start
The NLPA has a fresh start after two previous iterations. The current Board has a mix of business, pleasure boat, and commercial shipping backgrounds. Marshall rated a priority for the Board the creation of a harbor management plan. The Board has requested funding for the plan from the mayor and New London City Council. There was some discussion among members of the audience and Jesse Marshall on where funding could be sought and how much the creation of plan might cost. {draft minutes of meeting}

**MAINE**

**PAN AM: NO VIOLATIONS**

17 July, Augusta. FIRES WERE CAUSED BY SPARKS FROM A PAN AM FREIGHT TRAIN, BUT AN INVESTIGATION ATTRIBUTED THEM TO AN UNDETERMINED MECHANICAL PROBLEM, and found no violations of Maine law.


Forest Rangers held the Pan Am freight train in Dover, New Hampshire where one of their investigators inspected locomotive 307 and its consist. The exhaust stack on locomotive 307 was found to be within compliance of Maine spark arrestor law and was ruled not likely a contributing factor in the wildfire starts.

40 railroad-caused fires a year
Rangers on average respond to and investigate over 40 railroad caused fires annually. They also patrol hundreds

\(^6\)And author, *Quebec Central Railway: From the St. Francis to the Chaudière*.
of miles of railroad tracks each year to ensure the vegetation is managed according to state fire prevention laws. Maine’s fire prevention railroad laws are targeted towards reducing fire hazards along the right-of-way and properly maintaining the locomotive engines so that sparks are not thrown from the exhaust into nearby vegetation and start wildfires.

Total damage estimates from this fire are still being tallied by victims and insurance companies, but are expected to be in the hundreds of thousands of dollars. {agency press release}

**PORTLAND-PAN AM: PERMITS GRANTED**

8 July, Portland. *THE PLANNING BOARD OKAYED CONSTRUCTION OF THE INTERMODAL TERMINAL* here, to serve the International Marine Terminal [see 14#06B].

**Phin deal with MDOT**

Earlier this day, Phin Sprague and MDOT reached agreement on the price the department will pay Sprague for the land it took by eminent domain, as well as access to Phin's remaining parcel. He declined to specify the price, except that the state was still not paying him the worth of the property [see 14#05B].

However, he views the terminal as “an incredible opportunity.” [Moreover, Pan Am will give him a commensurate break on the price which he will pay to expand to the west – see 14#05B.]

**Bidding for work**

Craig Morin, HNTB consultant on the MDOT project, said requests for bids would issue in the coming week, work should start in September, and last 10 to 12 months. {Kevin Miller in Portland *Press Herald* 9.July.14}

**SOUTH PORTLAND: CRUDE OIL BAN**

9 July. *THE CITY COUNCIL PASSED THE CRUDE OIL EXPORT BAN 6-1*, with about 500 in the audience – 60 of whom spoke. The light-blue “clear skies” t-shirts on supporters outnumbered the red “SoPo jobs” about 200 to 100.

The Planning Board will review the draft ordinance [see 14#06B] on 15 July, and then the City Council will take a final vote on 21 July. {Kelley Bouchard in Portland *Press Herald* 9&10.July.14}

**Status of distillate?**

The draft ordinance defines crude oil:

**Crude oil.** A naturally occurring mixture consisting predominantly of hydrocarbons and/or sulfur, nitrogen, and oxygen derivatives of hydrocarbons that is removed from the earth in a liquid state or is capable of being so removed; unrefined oil sands/tar sands oil products; diluted bitumen; and synthetic crude oil; but does not mean gasoline, diesel, biodiesel, ethanol, kerosene, No. 2 fuel oil, jet fuel, aviation gasoline, home heating oil, asphalt, distillate, waste oil, lubricants, or other refined petroleum products

In mid-June, the Obama administration permitted the export of crude oil processed minimally:

'All U.S. crude oil that is processed by a distillation tower - not just condensate - is exempt from the crude export ban, potentially widening the amount of petroleum U.S. producers can send to markets abroad, Reuters reports, citing U.S. government and industry sources.

'By focusing on how the oil is treated rather than what it is, this week's ruling allowing two companies that produce condensate to export the oil if it is processed by a distillation tower appears to open an option for companies that produce traditional crude to get around the export ban by lightly boiling their own oil, according to Reuters.

The new interpretation of the ruling will add to the speculation over how much of the U.S. shale oil boom might reach overseas markets.' {SeekingAlpha 27.June.14}
PORTLAND: EIMSKIP UPDATE

21 July. **EIMSKIP CONTAINER TRAFFIC IS INCREASING**, according to Chuck Hastings at the company's Portland office. He underscored that 'Eimskip is willing to speak with any company regarding international service to or from Canada, Iceland or Europe (Via Rotterdam, NL) and performs full logistics and LCL services on site.

'Reight now Eimskip is importing much more than exporting but that will change as it grows more customer confidence. The past 10 years of spotty container service out of Portland has left a lot of businesses skeptical about any container service, but they are starting to realize Eimskip is consistent with its service.'

The company declined to release actual numbers of containers per month.

Vehicles
Outbound, Eimskip is carrying Ford trucks and Nissan electric automobiles, one per container, to Iceland.

Minerals
Inbound, Eimskip lands containers loaded with ferrosilicon⁷ and cryolite⁸. These are drayed to the Sprague warehouse at Cassidy Point in Portland, and transloaded to boxcars. Three 40-foot boxes, 29-ton maximum load, will fill one boxcar with 85-ton capacity.

An application for TIGER VI funds for the Mountain Division [see 14#05B] noted that Eimskip's terminal, as of April, was used to only one-third capacity. {page 24 of the Greater Portland Council of Governments application}

Short-sea
Eimskip would like to grow traffic between Portland and Halifax, as earlier feeder services did.

Empties
Some outbound traffic consists of empty containers, when Halifax experiences a shortage. {e-mail to ANR&P}

MASSACHUSETTS

HRRC: SALE TO STATE*

16 July, Boston. **THE MASSDOT BOARD APPROVED THE PURCHASE OF HRRC RAIL LINES** in Massachusetts. According to HRRC Vice-president Ed Rodriguez, three entities made the sale:

- For the line south from Pittsfield to the Connecticut line, the Housatonic Railroad Company and the affiliate Maybrook Railroad Company. HRRC will retain a permanent freight easement.

-For the line north out of Pittsfield, the affiliate Coltsville Terminal Company, which acquired the short branch in 2002 [see 03#04B]. HRRC did not retain an easement; it has not moved freight on the line for several years. This will become part of the rail trail north to North Adams. {e-mail to ANR&P 17.July.14}

Price
The agreement provides $12.13 million for the lines, and an estimated $35 million for track improvements to provide eventual passenger service to New York City. {iBerkshires.com 16.July.14}

Rodriguez said HRRC would like to provide the passenger service [see 12#12B], 'and believes it will, but this has yet to be determined.'

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⁷ An alloy of aluminum and titanium, used in the production of steel and cast iron. {various websites}
⁸ Sodium aluminum fluoride (Na₃AlF₆), used as a flux in production of aluminum. A large deposit once existed in Greenland, now exhausted. {various websites}
STB approval
Michael Versecakes, MassDOT spokesperson, wrote: '[B]efore being finalized, the agreement will have to be approved by the Surface Transportation Board.'

Rodriguez added: '[A] proceeding will be instituted for determination that the transaction qualifies for exemption under the State of Maine precedent.' {e-mails to ANR&P 17 July 14}

NEW HAMPSHIRE

PAN AM: SEA-3 APPEAL ++
8 July, Portsmouth. AN UPDATE ON THE CITY OF PORTSMOUTH APPEAL OF THE NEWINGTON GREEN LIGHT for Sea-3 expansion and potential propane export [see 14#06A]:

Newington Zoning Board of Appeal
The Board has scheduled a hearing on 25 August. Sea-3 attorney Alan McEachern said he will “challenge the city's standing to make that appeal. Portsmouth received notice of the proceedings at the Newington Planning Board based on the regional impact statute. It entitles a notified abutter to offer their input during a hearing, but it does not grant them status as an abutter for appeal status. That's a real bone of contention from our point of view.” [Mini-editorial: Do I hear the losing side appealing any ruling the ZBA makes on standing? And that appeal going to the New Hampshire Supreme Court.]

Rockingham County Superior Court
The court has issued a stay on the lawsuit until a Newington ZBA ruling, said McEachern. “When there's an appeal of a planning board decision based on questions of zoning, it has to be run through their local appeals board. The superior court appeal is stayed until the ZBA case catches up to it.”

Portsmouth attorney Christopher Cole, who represents several city residents who have fought Sea-3's expansion, filed a notice to intervene in Portsmouth's lawsuit. “My clients ... have skin in the game, irrespective of the fact there's a municipal border between them and Sea-3,” Cole said. “We think the issue of federal pre-emption is not germane.” {Jeff McMenemy in seacoastonline.com 9 July 14

More ties, but no track speed guarantee
On 14 July, Pan Am Executive Vice-president Cyndi Scarano told the Portsmouth City Council that the number of propane cars for Sea-3 would increase from 1,000-1,500 to between 2,000-3,000 per year if the Sea-3 permit is not overturned. Pan Am has already installed 5,000 new rails on the Portsmouth branch, as part of a commitment to Newington. If the decision is not overturned, Pan Am would add 5,000 more ties, to upgrade to Class 2 status.

But, said Scarano, she didn't see any time in her lifetime "where we need to go more than" the 10 miles per hour Class 1.

City Councilor Stefany Shaheen earlier asked the city to look into the possibility of creating "quiet zones. “We are never proponents of quiet zones,” Scarano stated. “A whistle in a locomotive is not put there for a romantic reason, it's a safety feature.”

Asked about the condition of Pan Am tracks and how the company inspects them, John Robinson, NHDOT railroad inspector, said, “I don't really feel uneasy about Pan Am or any other railroads in the state.” But he acknowledged that Pan Am inspects its own bridges, and those reports have generally not been open to public inspections.

Move the track?
Mayor Bob Lister argued against moving the rail alignment from downtown Portsmouth to the Pease

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9 The STB agreed with the MDOT contention that when it was acquiring the SLR line from Yarmouth to Portland, and SLR retained permanent freight rights, STB approval was not needed as MDOT never became an operator. See 10#12B.
International Tradeport [see 14#04A]. Moving the tracks is “just moving the problem from one area to the next.”

Scarano also downplayed a new alignment. “You have about a mile of no tracks. So you have a lot of takings you're going to have to take. Then you'd basically have to build a brand new line for the mile.” Another Pan Am employee estimated the cost of running the line through the Pease Tradeport, and therefore over the Spaulding Turnpike, at “tens of millions of dollars.” {Jeff McMenemy in seacoastonline.com 15.July.14}

VERMONT

CMQ: NEW OPERATION

14 July, Newport. **AFTER TAKING OVER FROM MMA**, CMQ is cleaning out the Newport yard. This day the northbound train had eight MMA hi-cube boxcars stored at Newport for the last six months. Two boxcars and two covered hoppers should also be moving north from other tracks in the yard.

Earlier, VRS spotted 16 cars for the northbound train: four empty MMA log flats, four empty centerbeam flats, two SSEX hi-side gondolas, and four covered hoppers.

NBM Rail Services maintains over 520 miles (837 kilometers) of track in the province of New Brunswick and the state of Maine. NBM Rail Services offers an array of design and maintenance services to rail, industrial, and manufacturing customers in the United States and Canada. If you have a project or a problem, we have a solution.

**Services Offered:**
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**Contact Information:**
Tyler Langille
(506) 643-1784
Langille.Tyler@nbmrailways.com

JDI Integrated Logistics – Connecting Customers to the World
Yard activity
CMQ was pumping water out of the turntable pit, and replacing the rails/grade crossing on the lead to the Feed Commodities track near the south end of the yard. Several pieces of track equipment were parked on the van track near the roundhouse, including a regulator and a VRS tamper. {Fritz Gerhard in CMQ e-list}

RAIL FREIGHT FACILITIES

Described in this issue.

Brookhaven Rail (NYA, New York) Criticized by federal court.
Eimskip (Pan Am, Maine) Permits for intermodal terminal.
ELM Global (NYA, New York) Will handle MSW.
Island Rail (NYA, New York) Facility burned, now shut.
Plains LPG (PAS, New Hampshire – see Regional). Caught in NECR dispute.
Rymes (CCRR, New Hampshire – see Regional). Caught in NECR dispute.
Sea-3 (Pan Am, New Hampshire). Portsmouth appeals permit.

EDITORIAL

TAR SANDS BAN, OR CRUDE OIL BAN? Correction
In e-bulletin(ii) of 10 July, I erroneously reported that the proposed ban on crude oil in South Portland did not refer to tar sands. As any reader of the language [see Maine] could discern, I was wrong. The ban covers all crude, and specifically refers to tar sands.

However, the Portland Press Herald, does a disservice to the question by insisting that the dispute only affects tar sands. True, US law currently forbids export of domestic crude oil, so only Canadian crude – most probably tar sands crude – can be exported. That might change in the near future, or indeed the exception in the ordinance for 'distillate' may be designed to permit export of minimally-processed crude. As opponents of the ordinance change continue to point out, it will affect all crude oil export. It will come into play when (not if) the US permits export of crude oil. The opening of the US East coast to underwater sonic exploration, announced on 18 July, could portend major oil and gas production there. South Portland would be unable to export any of the crude found.

Yet the Press Herald continues to insist the question only involves tar sands crude from Canada. John Richardson, assistant city editor, put together a nice history of the South Portland dispute in his opinion piece. {Press Herald 18.July.14}

He correctly paints the dispute as part of a wider battle, but limits the battle ground to tar sands: 'It’s hard to see how the pipeline-by-pipeline chess match will end. Some are saying that the future of Canada’s oil reserves shouldn’t be left up to city councilors in South Portland or judges in Nebraska and British Columbia. Maybe packing a community center with red and blue T-shirts and amending waterfront zoning in Portland Harbor isn’t the best way to set international energy policy or develop a strategy to fight global climate change.

'Some scientists from Canada and the United States published a plea for a better way in an article in the journal Nature in late June. They said the piecemeal approach gives the impression that export of the tar sands oil is inevitable, even though it should not be:

"Current public debate about oil-sands development focuses on individual pipeline decisions. Each is presented as an ultimatum – a binary choice between project approval and lost economic opportunity," the scientists wrote. “This approach artificially restricts discussions to only a fraction of the consequences of oil development, such as short-term economic gains and job creation, and local impacts on human health and the environment. Lost is a broader conversation about national and international energy and economic strategies,
and their trade-offs with environmental justice and conservation.” (emphasis added)

The Nature scientists confined their comments to tar sands. But their call for a “broader conversation” is the correct one. It should look at the consequences of all oil development, not just tar sands. The Press Herald must open its horizons, as South Portland already has.