Pan Am: Recognizes need for change in environmental culture, and initiates environmental culture assessment, $152,000 in fines. Editorial.

GU & MMA: Arguments at the First Circuit, along with Whitey Bulger.*

**NEW YORK**

CP & CSXT: More FRA & NYS DOT inspections turn up violations in Albany, not in Selkirk Yard.*

[No report.]

**Québec**

[No report.]

**Connecticut**

**Maine**

NHDOT & MDOT: Different attitudes toward transparency in bid processes.*

Pan Am: NEPW Logistics adds a fourth paper trimmer in Scarborough.*

**Eastern & Bayside:** Ship calls include dryers for the tissue mill, now under construction. Woodpulp should total 300,000 tonnes in 2015.++

**Massachusetts**


**New Hampshire**

Pan Am v MBRX: Pan Am files in Superior Court to recover unpaid trackage fees.

**Rhode Island**

[No report.]

**Vermont**

VRS: Residents fuss about stored empty tank cars in Charlotte. In NY, SNC makes $$ from storage.++

NECR v Pan Am: Disputed method of analysis for track fees may make procedure 'extended'. Board will decide, suspends other actions.++

TRSD: 2015 Vermont State Rail Plan notes little effort to resolve track ownership since Forbes' death 2011.*

**Maritimes**

Halifax: Is decline levelling off?

**Rail Shippers/Receivers**

A cross-reference to companies mentioned here.

**People, Positions, Events**

Jean-Marc Bissonette

**Editorial**

See Regional.

**From the Publisher**

Four editorials in this issue – can you find them all?

- Chop Hardenbergh Next formal issue 17 August.
REGIONAL

PAN AM: WILL DO 'ENVIRONMENTAL CULTURE ASSESSMENT' ++

17 July, Boston. **THE RAILROAD PROPOSED, AND WILL DO, AN ASSESSMENT OF ITS ENVIRONMENTAL CULTURE AS PART OF A SETTLEMENT WITH EPA.** The agreement, announced this day, was signed by Susan Studlien, EPA Office of Environmental Stewardship Region 1, and Cyndi Scarano, Pan Am executive vice-president. The railroad also agreed to $152,000 in fines [see 15#02B announcing proposed fines and noting that informal conferences may take place].

[Scarano and General Counsel Rob Culliford negotiated the agreement with EPA attorney Jeff Kopf. {e-mail to ANR&P from Abby Swaine of EPA 24.July.15}]

The violations

According to allegations in a complaint filed by EPA this past winter related to the Waterville facility, Pan Am violated the conditions of the Maine “Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity,” as well as federal Oil Pollution Prevention Regulations.

According to EPA’s complaint, Pan Am’s stormwater pollution prevention plan (SWPPP) did not adequately describe control measures necessary to minimize the impact of stormwater running offsite to nearby surface waters. Debris piles were located on site without proper controls in place, and oil staining was observed throughout the site. EPA asserted that the company failed to maintain certain erosion control measures.

In addition, EPA alleged that the company failed to fully implement a Spill Prevention, Control, and Countermeasure (SPCC) plan, a tool to avoid oil spills.

EPA had also filed another complaint alleging similar violations related to the company’s East Deerfield, Mass. facility. EPA alleged that Pan Am violated the conditions related to stormwater management of its individual NPDES permit, and also violated the federal Oil Pollution Prevention Regulations. According to the complaint, the facility failed to include adequate site maps that contained all the required components of a SWPPP; failed to conduct annual stormwater inspections in 2011 and 2012; and failed to implement good housekeeping practices designed to maintain areas that are potential sources of pollutants. The facility also failed to stabilize an area of the site where significant erosion was occurring. In addition, EPA alleged that the company failed to fully implement its SPCC plan at this site as well. {text of EPA press announcement}

The Order

The Order, to which Pan Am agreed, stated:

1. Springfield Terminal Railway Company shall implement the Environmental Culture Assessment (“ECA”) included as Attachment 1, including any action plans developed under the ECA. Springfield Terminal Railway Company shall incorporate implementation of the ECA and any associated action plans as part of its SWPPPs for each of its New England facilities requiring a SWPPP (or its equivalent under state requirements). The action plans will outline milestones and establish timelines for implementation of key actions.

EDITORIAL: STANDING 'O' FOR PAN AM

Readers are aware that I founded this newsletter in part because I want to support railroads as a more environmentally-sound method of freight movement.

Readers also know that Pan Am has been found, by various courts and agencies, to violate various environmental laws.

Now comes Pan Am, on its own, to propose an assessment of the 'maturity level of the current environmental culture present at both the corporate and yard level' and to improve that culture where necessary.

Pan Am is even bold enough to assess 'employees' belief that there can be zero environmental incidents/releases at Pan Am.’

Such a wonderful step forward deserves applause. Would that all companies – indeed, all individuals – hold that belief.
2. Deadlines —— Springfield Terminal Railway Company shall meet the following deadlines:

a. Complete Phase 1 of the ECA within one year of the effective date of this Order;
b. Complete Phases 2 and 3 of the ECA within two years of the effective date of this Order;
c. Provide copies of the action plans developed under Phase 3 “Action Plan Development” of the ECA to EPA within 30 days of completion of such action plans;
d. Provide biannual reports to EPA as described in Section IV.6 of this Order.

Applies to five yards

3. Applicability -- The ECA shall apply to the following Pan Am Railways, Inc. facilities:

a. 38 Railroad Yard Road in East Deerfield, Massachusetts
b. 1 Upper Rail Yard, Ayer, Massachusetts
c. 1700 Iron Horse Park, North Billerica, Massachusetts
d. 55 College Avenue in Waterville, Maine
e. 38 Rigby Road, South Portland, Maine. (page 8)

The Environmental Culture Assessment

The entire ECA is here included because of the specific references to the maturity level of the current environmental culture present at both the corporate and yard level.

Pan Am is proposing to work with ERM Consulting and Engineering, Inc. (ERM) to perform an Environmental Culture Assessment (ECA) to determine the maturity level of the current environmental culture present at both the corporate and yard level. Once the current environmental culture maturity level is determined through the use of the ECA, Pan Am will use the results of the assessment to develop and implement specific action plans to improve the current environmental culture and, thus, to mitigate the impact of rail operations on the environment. This multi-phase process is summarized below.

Phase 1 - Project Setup

The first phase of this ECA project will be to develop Pan Am-specific Environmental aspects, as related to both people and systems. People-related aspects focus on the “soft” side of an environmental culture; system-related aspects focus more on the documentation side of an environmental culture at an organization. The specific people and system-related aspects will be developed internally by Pan Am to ensure that the behaviors and cultural aspects most critical to environmental protection and compliance will be addressed. By customizing the aspects, this allows Pan Am to develop an assessment process that meets the needs of and focuses on the areas where they see the need for the most improvement. Examples of aspects used historically include:

1. People-related aspects
   a. Belief - A measure of employees’ belief that there can be zero environmental incidents/releases at Pan Am.
   b. Leadership Commitment — A measure of the involvement of senior leadership at Pan Am, both at the Corporate and Yard level.
   c. Communication — A measure of how effective communication is at the organization about environmental issues.

2. System—related aspects
   a. Operational Controls - A measure of the documentation present at the organization and its usability/compliance and employees' understanding of the documentation.

b. Incident investigation — A review of the spill/incident investigation process and its effectiveness. For example, whether incidents are reported and closed appropriately.
c. Training — A measure of the effectiveness of the training program to determine if those individuals that are receiving training are receiving the proper training based on their responsibilities and have an understanding of the information received and how to apply it to their day-to-day jobs.

Next, the ECA will determine Pan Am-specific maturity levels for the previously identified people and systems-related culture aspects. A ranking system will be developed using a progression from one to five, with one representing an initial or basic maturity level and five representing the ideal or optimized environmental culture. These levels will be developed for each of the identified people and system-related aspects. (emphasis added)

Environmental Culture Assessment gap – specific levels

1. Examples of maturity levels for people-related environmental culture aspects may include the following:

a. Initial (1) - This level represents a weak and unstable environmental culture.
b. Reactive (2) - This level represents an environmental culture that builds on reactions in case something goes wrong while ignoring broader issues.
c. Calculative (3) - This level represents an environmental culture that is built on a tactical approach toward safety.
d. Individual values (4) - This level represents an environmental culture driven by strong individuals who take pro-active leadership roles.
e. Shared values (5) - This level represents a vital and stable environmental culture fundamental to the business.

2. Examples of maturity levels for systems-related culture aspects may include the following:

a. Initial (1) - This level represents a system in which no proven processes are in place.
b. Managed (2) - This level represents a system in which basic environmental management practices are in place.
c. Defined (3) - This level represents a system in which environmental processes are well characterized, understood and described in Standard Operating Procedures (SOPs).
d. Quantitatively Managed (4) - This level represents a system in which environmental objectives are set and performance is measured regularly. Results serve as criteria to improve environmental performance.
e. Optimizing (5) - This level represents a system in which environmental performance and processes are included in the overall, continuous improvement process.

Based on customized environmental culture aspects and maturity levels developed during the project setup phase, ERM and Pan Am will create a Pan Am-specific ECA process to incorporate feedback from staff at all levels and in all roles. Moreover, we will determine the proper personnel to reach out to as well as which yards to use as part of the assessment process.

Phase 2 - Analysis (Assessment)

Based upon the process developed in Phase 1, ERM and Pan Am will conduct an environmental culture assessment specific to the Pan Am system, which will include the following:

1. Practical workplace observations at the identified Pan Am locations. This step will target all facilities where Pan Am has active operations such as repair facilities and classification yards. These facilities include Deerfield, Ayer, and Billerica, Massachusetts, and Portland, and Waterville, Maine;

2. Facilitate discussion sessions to targeted groups of Pan Am management and employees from all career levels across the system. Discussion sessions will be held in multiple locations across the system in order to access the highest number of employees in a variety of roles; and

3. Carry out personal interviews with pre-specified individuals in more senior roles within the organization. This step will include interviews with personnel in environmental roles as well as managers from other departments in order to gauge the level of engagement of management in environmental issues.

After the assessment process, ERM will draft a report with findings and recommendations from the environmental culture assessment. As part of the assessment process, data presented will include both the results of Pan Am employee survey results as well as ERM survey results.
Phase 3 - Action Plan Development

Action plans are the opportunity to take the results of the ECA and implement change to the current environmental culture. Pan Am will define which individuals will be involved in Phase 3, what action plans should be developed, and which parties will be working on which specific action items. It is important to note that ownership and responsibility for completion of action items should not rely solely on the environmental department; buy-in and involvement from all portions of the organization, such as management, safety, and engineering personnel, is essential for the success of the action plans. The steps in Phase 3 will include:

1. Development of action plans based upon the results of the culture assessment and ongoing initiatives at Pan Am. Actions will be developed using input from Pan Am as well as ERM. The action plan will outline milestones and establish a timeline for implementation of key actions.

2. An environmental action workshop will be held, with oversight from ERM, to establish responsible parties, deliverables/key performance indicators/metrics, resources needed, start dates, and deadlines for the action steps identified. Responsibility for each action will be assigned to a Pan Am employee to oversee implementation. Ideally, responsibility for actions will be distributed across the system to facilitate cooperation across geographic area and roles.

Phase 4 - implementation of Action Plans

In the Implementation phase, Pan Am will begin to implement the action plans developed in Phase 3. Progress will be measured against key “gateways” or certain timeline points established in Phase 3 for status checks. To ensure progress is made, teams of Pan Am personnel will be established and assigned responsibility for implementation of each of the action items. As mentioned previously, responsibility for implementation of the actions will be distributed across all levels and across the geography of the system. Each of the action plan teams will report to senior management on a regular basis with the current status of the project. The teams will:

1. Work to complete all necessary changes and will carry out further actions, as needed. Document the action plan and conduct transition planning, as needed, should ongoing action be required to satisfactorily implement the action across the system.

Phase 5 — Consolidation and Continuation

Phase 5 can be considered the “final phase” of the ECA process. However, reaching and completing Phase 5 should not be considered the end of the culture change process. In the Consolidation and Continuation phase, all completed action plans are incorporated into “day to day” operations at Pan Am (i.e., communication, training, tracking, record keeping, etc.). Permanent processes and revised/new roles and responsibilities will be introduced to all Pan Am employees and management.

it is recommended that Pan Am perform a reassessment of the environmental culture at a set frequency (i.e., one year to the date of completion of Phase 2) to determine the current status and to develop new areas of focus/action plans for continual improvement of the culture within the organization. {text from EPA}

28 July, Cambridge. PAN AM SUGGESTED THE “UNIQUE” ECA, AND DRAFTED IT, said Jeff Kopf, the EPA attorney who handled the settlement.

Kopf emphasized that the initiative came from Pan Am. “They completely recognized that they had work to do to ensure that all employees, from the yard to management, were aware of environmental obligations.

“They said they recognize they've had an ongoing problem for many years. They indicated it's time to really evaluate where they can improve, and stop having constant enforcement from EPA.

“They brought in an outside consultant, to help them develop a program to do that. They showed us that ERM has experience in developing similar efforts in other situation, and gave us confidence that this would be effective. “

Similar, but unique
Kopf noted that EPA has seen self-assessments or audits as part of other settlements. This is “unique; it's really focussed on looking at the culture from lowest to higher levels.” {ANR&P discussion 28.July.15}
A request for comment from Scarano was not responded to by publication time.

GU & MMA: AT THE FIRST CIRCUIT*
28 July, Boston. **MMA AND WHITEY BULGER JOIN GU AS ONE OF THE PARTIES ARGUING CASES IN THE FIRST CIRCUIT COURT OF APPEALS** this week.

GU
The railroad faces appeals from two STB decisions: One denying the Town of Grafton has much say over the siting of the propane facility [tanks emplaced now – see 15#06B], the other denying the Town of Upton much say over a transload [see 15#01B].

Wheeling & Lake Erie Railroad v Trustee of MMA in bankruptcy
WLE, one of the creditors, is arguing about insurance policies under Article 9 of the Bankruptcy Code. This lies beyond the purview of this newsletter. {Court website, docket number 15-9003}

Whitey Bulger
This former South Boston resident and member of the Mob was convicted of several murders and other offenses. He claimed the judge barred him from presenting evidence that he was promised immunity by a prosecutor.¹ {Court website docket sheet}

NEW YORK

CP & CSXT: MORE NEW YORK INSPECTIONS*
22 July, Albany. **ANOTHER ROUND OF TARGETED CRUDE OIL TANK CAR AND RAIL INSPECTIONS** uncovered 62 defects [see 15#03A & 03B for previous inspection], including one critical safety defect that required immediate corrective action.² State and federal teams examined 524 crude oil tank cars and approximately 152 miles of track and 38 rail switches in these inspections.

In the previous week, NYSDOT and FRA inspection teams carried out crude oil tank car inspections at the CP's Kenwood Yard in Albany; CSXT's Selkirk Yard and Frontier Yard in Buffalo; and the Buffalo & Pittsburgh-owned D&E Yard in Buffalo.

Some results:

Kenwood Yard track. FRA track inspectors examined two miles of track and 19 switches at the Canadian Pacific-owned Kenwood Yard in Albany County and found 10 non-critical safety defects, including loose or missing bolts and cotter pins and an insecure switch point.

Kenwood Yard & Global Energy tank cars. At Kenwood, rail

¹ While Mr. Bulger has no known connection to railroads, I included his case whimsically as most New England residents have some familiarity with it. Editor

² A missing bolt on a continuously-welded rail joint on the CSXT main line west of Selkirk. The defect was immediately corrected.
equipment inspectors examined 100 crude oil tank cars and found three non-critical defects, including thin brake shoes and a defective air hose and hose valve.

Inspectors also examined 120 crude oil tank cars at Global Energy’s facility and found eight non-critical defects, including shelled wheels, a defective knuckle pin, and a broken brake cylinder component.

Selkirk. At the CSXT Selkirk Yard in Selkirk, hazardous material inspectors examined 105 crude oil tank cars and found no defects.

Port of Albany tie-down. On the Canadian Pacific main track at Green Street [sic – probably Church Street – editor] in the Port of Albany, operating practice inspectors checked for proper train securement. An empty northbound crude oil train was found to be properly secured. {announcement from governor's office}

MAINE

NHDOT & MDOT: RFP ATTITUDES*

MDOT
For the Rockland Branch RFP, the DOT has issued at least one set of responses to questions [see box]. Proposals are due on 13 August.

<table>
<thead>
<tr>
<th>Questions &amp; Responses</th>
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<tbody>
<tr>
<td>Maintenance and Operation of Rockland Branch and Operations in Brunswick Yard</td>
<td></td>
</tr>
<tr>
<td>Q: How many of the moveable bridges are currently operational?</td>
<td>A. One, Carlton Bridge in Bath</td>
</tr>
<tr>
<td>Q: Do the moveable bridges, in service or not, have a warning system to indicate they are open?</td>
<td>A. The Carlton Bridge has a warning system</td>
</tr>
<tr>
<td>Q: Is the Bridge Tender paid by the State or the Railroad?</td>
<td>A. The State</td>
</tr>
<tr>
<td>Q: Does the State own any land other than the ROW along the Branch?</td>
<td>A. Yes, at several locations, most is minimal (less than 200 ft. wide) but at three locations there is significant property that could be used for transloading etc. These are: Brunswick Wye (Cedar St.), Waldoboro MP 66.11 (Cross St.), Rockland Yard MP 85.25 Park Street.</td>
</tr>
<tr>
<td>Q: Does the State intend to make any major capital improvements to the line; ex: replacement of green or test bridge timbers?</td>
<td>A. State will assist in significant periodic tie replacement, bridge timber replacement etc. surfacing etc. when this is required. This is done in partnership with the operator, generally the State supplies materials, and RR installs. Maint. tie replacement etc. is RR responsibility</td>
</tr>
<tr>
<td>Q: Is car storage permitted on sidings and in the yard?</td>
<td>A. Yes for cars being used in operations of the line. Any longer term car storage would need to be approved by the State on a case by case basis with revenues accrued to be invested in the infrastructure.</td>
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</table>

NHDOT
For the state lines RFP, due 17 August, Shelley Winters, administrator of the NHDOT Bureau of Rail and Transit, wrote in response to questions your editor submitted:

‘As this is part of an ongoing procurement process, these questions will be treated and answered, as appropriate, with others received in accordance with the terms of the RFP and responses will be issued in an Addenda, to be published by NHDOT on the Bureau’s website on 08/03/2015.’ {e-mail to ANR&P 20.July.15}

Mini-editorial: One would think that the sooner questions are answered, the better the proposals will be. What is served by waiting four weeks?

PAN AM: NEPW EXPANSION*

22 July, Scarborough. NEPW LOGISTICS HAS ADDED A FOURTH PAPER CONVERTER HERE. As described by Ralph Carpenter, chief operating officer, the four converting machines in a 147,000SF warehouse convert (trim) large paper rolls received from three customers: Sappi, Verso, and Irving.

The rolls arrive from the paper mill in widths up to 86 inches, the majority by rail. Through transparency
provided by software, a mill can specify which machine to use to trim the roll, and to which width. The resulting roll is wrapped and shipped to the end user by: sea via Portland or ports south of Portland, rail, or (the majority) truck.
Busy times, good future

Carpenter said that the printers are increasingly moving away from generic printing papers to specialized uses such as labels and wrapping, requiring specific custom widths. While the mills still ship 90% or more of their rolls direct to the end user, he expects the percentage needing converting to increase.

Carpenter, who founded the operation as Northeast Paper before it was purchased by NEPW in 2009, started with two machines, adding #3 in 2011 [see 11#11A]. The #4 machine time was “sold out before it was operational,” he said, and he is already considering a fifth machine.

Asked whether he saw a decline in the paper industry in Maine, he said no. His employees keep the converters running 363 days a year. {ANR&P coverage}

EASTPORT & BAYSIDE: SHIPPING, TISSUE ++

20 July. THE PORT IS IN LINE TO SHIP 300,000 TONNES IN 2015, Federal Marine Terminals' Al Day told the Eastport Port Authority board meeting.

Vessel calls Eastport

On 25 June the Singelgracht called with two Yankee Dryers from the Netherlands. Weighing 128 tonnes and coming in 36 parts, they were trucked, slowly, to Baileyville for use in the St.Croix Tissue mill under construction.

On 30 June the Oceanqueen sailed for China with 12,000 tonnes of woodpulp. On 14 July the Star Laguna sailed with 7500 tonnes of woodpulp for Italy. On 21 July the Optimana arrived to load 20,000 tonnes of woodpulp.

Vessel calls Bayside

On 2 July the Barkald sailed with aggregate. On 7 July the Scheldegracht dropped four barges for 'a local salmon business'.

On 3 July the Eidsvaag Vinland sailed with salmon feed. The ship returned, loaded more feed, and sailed for Newfoundland on 17 July.

On 18 July, the Everest Bay arrived to load [corrugated cardboard medium from the Lake Utopia mill – see 15#03A&03B] for Central America. {Quoddy Tides 10&24.July.15}

MASSACHUSETTS

MASSDOT: 2015 IRAP AWARDS*

20 July, Boston. MASSDOT ANNOUNCED FIVE GRANTS TOTALING $2 MILLION FOR INDUSTRIAL RAIL PROJECTS as part of the 2015 Industrial Rail Access Program (IRAP). The IRAP funding for the five projects is being matched by more than $1.7 million in private sector funds for a total $3.7 million investment in freight rail improvements in the third year of IRAP.

Created as part of the 2012 Transportation Bond Bill, IRAP provides grants to railroads, rail shippers and municipalities that identify a public benefit gained through improved rail transportation usage or economic growth that would be realized through improved access to rail assets.

BORDEN & REMINGTON, FALL RIVER

• Borden & Remington Corp. – $383,910: Fall River- Mass Coastal RR rail siding rehab & expansion, safety and unloading dock improvements.

History

The company is one of Fall River’s oldest, founded in 1837 by Hale Remington. Since 1972, Daniel Bogan ( former City Council president and briefly Fall River mayor after Carlton Viveiros resigned) has headed it, and his son Robert Bogan. It processes sodium hypochlorite, the main ingredient in laundry bleach also used as a
water and wastewater disinfectant mandated by the federal government; and aqueous ammonia, a household cleaner used in many products, including textiles. The ammonia also is used as a cleaning agent by power plants, President Robert Bogan said. B&R sends out about 30 trucks a day of product.

In 2014, the B&R IRAP application was found incomplete [see 14#02B]. It reapplied in December 2014.

More details
According to MassDOT spokesman Jason Johnson, the rail and unloading dock safety improvements will total $656,522. MassDOT contributes $383,910, B&R a 40% match of $262,609.

Bogan said MC twice weekly spots tank cars with the liquids at the Wharf Yard [see map]. Gold Medal Bakery on Bay Street and Northeast Petroleum on Ferry Street also obtain regular deliveries at the rail yard, Bogan said. B&R uses its own trackcar to bring materials into the facility over a new switch installed in 2014 [see 14#09B].

Bogan said the safety improvements will improve efficiency for rail car unloading and switching equipment. {Michael Holtzman in Fall River Herald News 20.July.15}

CATANIA SPAGNA, AYER
• Catania Spagna – $500,000: Ayer- Pan Am Railways rail siding track expansion and unloading improvements.

According to MassDOT spokesman Jason Johnson, the rail siding track expansion and unloading improvements will total $995375. MassDOT contributes $500,000, Catania Spagna $495,375.

PVRR, WESTFIELD
• Pioneer Valley Railroad – $175,045: Westfield- Pioneer Valley RR installation of new rail siding at Railroad
Distribution Services facility.

According to MassDOT spokesman Jason Johnson, the new rail siding at a Railroad Distribution Services facility will total $291,742. MassDOT contributes $175,045, PVRR $116,697.

**MASS WATER – FRTC, QUINCY**

- MWRA – Fore River Railroad Corp. – $500,000: Quincy- Fore River Railroad mainline track realignment/capacity improvements at Fore River Shipyard.

According to MassDOT spokesman Jason Johnson, mainline track realignment and facility improvements to the Fore River Shipyard will total $995,261. MassDOT contributes $500,000, MWRA-FRVT $495,261.

**PW, WORCESTER**


According to MassDOT spokesman Jason Johnson, the wye track work will total $799,485. MassDOT contributes $455,691 in IRAP funds; PW a minimum of $343,794. {e-mail to ANR&P from Johnson 21.July.15}

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**NEW HAMPSHIRE**

**PAN AM v MBRX: ANOTHER LAWSUIT**

27 July, Nashua. PAN AM SUBSIDIARIES FILED SUIT TO COLLECT BACK TRACKAGE FEES FROM MBRX.

**Leishman comment**

Peter Leishman, MBRX principal, issued this statement on the same day:

'I'm at a loss to explain PAR's action. The MBRX has for years paid a trackage rights fee that is much higher per car mile than the fees PAR pays to use other rail corridors.

'PAR has called the fees they pay "not fair" [see below]. I have attempted for years to work with PAR to come to a fair rate for both carriers as PAR has trackage rights to use the MBRX corridor too. The most recent proposal by PAR was $3.57 per car mile which is well above the national average and PAR suggested we maintain their track.

'As PAR canceled our trackage rights terms more than 20 years ago, PAR is under no obligation to maintain the track and the MBRX has, without objection provided ties, switch timbers, rail and OTM to PAR to maintain this short section of the Hillsboro.' {e-mail to ANR&P}

1. **The facts per the Complaint**

1. In 1992 MBRX and Pan Am [technically Boston and Maine Corporation and Springfield Terminal Railway) signed an agreement permitting MBRX to use 4.4 miles of Pan Am track in Milford to reach Granite State Concrete's processing plant there.

2. MBRX agreed to pay $5/car with annual increases according to a Railroad Recovery Index.

3. The Agreement by its terms was for 12 years, until 2004. {Paragraph 3} Since then, the parties have behaved as though the agreement remained in effect, including Pan Am's invocation of its terms to forbid Peter Leishman, MBRX principal, from operating on the three-mile stub, and MBRX's claim that the terms do not
permit Pan Am to ban Leishman.

4. MBRX paid the per car fee plus annual increases through 2012. MBRX then reverted to a lower fee.

5. MBRX eventually stopped making payments altogether.

6. Pan Am stated that MBRX owes $37,813.50. {text of Complaint}
Other points
In 2012, Leishman discovered that the agreement expired in 2004. MBRX subsequently paid only $6.90 per car, the amount set for 2004. The rate had risen to $8.49 per car by 2010 [see below].

Leishman later unearthed a 1993 letter cancelling the agreement [see box]. The ICC in 1993 declined to revoke MBRX's operating rights based on Pan Am's allegation in the letter [see box in 09#07B].

On 30 July Leishman explained why he stopped paying entirely in 2013: 'Without objection, we have been supplying ties, timbers, rail, stone ballast, track bolts, joints, cutting brush, and labor. Our contribution to maintaining the Wilton to Milford section was and is becoming costly and necessary.

'For the last several years our contribution of materials and labor has far exceeded any trackage rights charges PAR alleges we owe.

'However, MBRX is still more than willing to sit down with PAR to discuss a reasonable trackage rights fee and the MBRX will continue to provide track materials if necessary.' {e-mail to ANR&P

Milford-Bennington Railroad operating track. {from 09#07B}
2. Efforts to reach new agreement
Leishman provided documentation about the history of the agreement as well as his efforts to engage Pan Am in negotiations to reach a new trackage rights agreement.

**Status of Agreement**
Both sides agree that the 1992 Agreement has expired.
Indeed, Leishman supplied a letter dated 23 March 1993 cancelling the Trackage Rights Agreement as of 3 April 2003 [see box].
In January 2010, Pan Am and MBRX were engaged in renewal negotiations. Pan Am's Robert Burns wrote Leishman: 'Although Pan Am prefers your cooperation in seeing this Agreement come to fruition, in the event that you are unable or unwilling to execute said Agreement as is, Pan Am expects to seek the assistance of the STB to resolve our dispute—a course of action that both MBRR and Pan Am were exploring during our last round of correspondence nearly a year ago.' {text of letter Burns to Leishman}
During their 2010 dispute about Leishman access to the Pan Am tracks, Leishman proposed using the STB alternative dispute resolution mechanisms. Pan Am declined. [See 10#05B New Hampshire.]

In 2012 Pan Am General Counsel Rob Culliford declined to negotiate a new agreement because NHDOT had terminated the MBRX operating lease.
In 2014, Burns declined to negotiate the trackage rights agreement because the Executive Council had not by then renewed the MBRX operating lease.
Burns added: 'I would also note that your determination that the agreement is terminated is problematical, as is your refusal to pay trackage rights fees at the current rate. In short, any operating agreement with NHDOT would be contingent upon Executive Council approval. Until that occurs, further discussion is not warranted.'
After the 2014 MBRX renewal of the NHDOT lease, Leishman again reached out to Burns and suggested resumption of negotiations. Pan Am did not accept the offer, and Leishman heard nothing further until he was served with the complaint from New Hampshire Superior Court.

**Comments about other trackage fees**
Pan Am President David Fink in May 2010 reported that Amtrak was paying Pan Am 25 cents per car-mile to

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**PAN AM TRACK SPEED FOR MBRX**
According to the Pan Am Employee Time Table #3, the current one:

| Milepost 11-13# | 10 miles per hour | 5 miles per hour |
| Milepost 13-16.36** | Yard limits DCS/Rule 93* | none |

#Leishman wrote that trains once operated from a siding at MP12 to serve a quarry of Quinn (subsequently Pike) [see box in 09#07B]. Pike stopped selling to Pan Am when it could not collect the bill [see 03#07A]. Pan Am subsequently removed the interchange track.
He now only operates 12 carlengths past the Granite State switch at MP13.50. {e-mail to ANR&P 29.July.15}

*Rule 93 states: Within yard limits, movements may be made on a main track by verbal permission of the Dispatcher (or Operator when authorized by the Dispatcher). The leading end of movement within yard limits must operate at Restricted Speed.
Restricted Speed is 20 miles per hour or 15 miles per hour.
** Within this stretch lies Hendrix Wire and Cable (now Marmon), served by Pan Am [see 14#01A].

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5 Given that the Agreement is no longer in force, though either side could claim that both sides agreed (or not) to abide by its terms, and MBRX still retains the operating certificate from the STB, I would respectfully suggest that both sides take up Burns' suggestion. Just as NECR and Pan Am have asked the STB to determine the trackage rights agreement for the ConnRiver, MBRX and Pan Am should request that the STB do so for the Hillsboro Branch. Editor
use the line between Portland and the Massachusetts border for the Downeaster. He compared that to the rate Amtrak was charging Pan Am $1.35 per car-mile to use the line between Springfield and Berlin to reach the Waterbury branch. [See 10#05B Regional.]

Said Leishman in 2010: “They are charging us $8.49/car to go three miles or $2.83 per mile and on top of that it is excepted track.” [See 10#05B New Hampshire.]

Yet in March 2010 Leishman expressed willingness to pay $10.21 per car and an annual minimum of 2000 cars. He declined to accede to language which would require MBRX to move nearly 11,000 carloads per year. {ANR&P discussion 28.July.15; copies of e-mails (emphasis added)}

Quantum meruit: responsibility for track maintenance

Under 1(f) of the Agreement which was attached to the Complaint, Pan Am is responsible for track maintenance. 'However, B&M/ST do not guarantee the speed at which trains will be able to operate over the Trackage.' MBRX may notify Pan Am of defects, and Pan Am has seven days to rectify them, and Pan Am is not responsible for damage ensuring during the seven days.

The section also states: 'It is the intent of B&M/ST to install welded rail between milepost N-11 and milepost N-16.36 within five years of the effective date of this agreement....'

Under 1(i), MBRX is not permitted to operate trains requiring speed restrictions 'below the authorized freight speeds as provided by B&M/ST operating rules... '.

In 2015 and for many years before that, MBRX performed track work on the Pan Am line to keep it in safe condition, as required by its insurance carrier. {exchange of e-mails in 2014}

VERMONT

NECR v PAN AM: TRACKAGE FEE DISPUTE ++

23 July, DC. PAN AM SAID 'IT IS EVIDENT THAT THIS PROCEEDING CAN ONLY BE EXPECTED TO BE AN EXTENDED ONE' in its response to NECR's motion for a protective order.

To review the bidding

NECR, represented by Eric Hocky, filed a request that the STB determine (as spelled out in the original Trackage Rights Agreement) the trackage rights fee for the NECR line which Pan Am uses between East Northfield and White River Junction. [See 15#06A.]

The parties fail to mediate the dispute. The STB-approved schedule for briefs and discovery began.

After flurry of contact, NECR on 15 July asked the STB to rule on what kind of reckoning model will be used to determine the appropriate fee.

Pan Am states

On 23 July, Pan Am responded, arguing that the parties did not have enough time to complete discovery, especially given the legal arguments around which model to use. Pan Am, via its attorney William Mullins of the DC firm Baker and Miller, asked the STB to suspend all deadlines except Pan Am's response to the NECR motion of 15 July.

Pan Am said in Footnote 4 of its 23 July filing: 'Given the current status of the case and discovery, it is evident that this proceeding can only be expected to be an extended one, with a prolonged and high level of uncertainty which itself throws into question the efficacy of the application of retroactivity and whether that supports - or as evidenced, hinders - an efficient, fair and balanced proceeding that is in the public interest.'

The arcane nature of the models themselves, plus the various filings, put the substance of this dispute beyond the coverage of this newsletter. Editor
NECR and Board agree; Board to decide later
On 27 July, NECR told the Board it did not disagree with Pan Am's note. The Board on the 29th stated:
'Given these circumstances, the Board will hold the deadlines for PAS’s reply and NECR’s rebuttal in abeyance pending further order of the Board. The Board will address the issues raised in NECR’s motion for preliminary determination of the appropriate valuation method and related discovery issues in a later decision.' {STB website, decisions and filing pages, FD 35842}

VRS: A FUSS ABOUT STORED CARS ++
23 July, Charlotte. A FEW RESIDENTS QUESTIONED THE PRESENCE OF EMPTY PETROLEUM TANK CARS IN THEIR TOWN. VRS has a siding in Charlotte once used for the ill-fated Champlain Flyer commuter service into Burlington [it was suspended 1 March 2003 – see 03#03A].

The Flyer project did not pay for the siding; it was restored in the mid-1980s with funds paid to VTR by the City of Burlington to provide VTR with functional replacement for loss of car storage capacity on the North Burlington line (the stub of the Rutland Railroad's old "Island Line") [see map]. Burlington wanted the right of way for a bike path. {John Dunleavy in e-mail to ANR&P 23.July.15}

Since 2003, the railroad has used the Charlotte siding for storage: earlier for passenger cars and boxcars, now tank cars with placard 1202 (gas, oil, diesel fuel, heating oil).

Complaints met with acknowledgement of federal jurisdiction
The Federal Railroad Administration sent an inspector in response to residents' concerns. A spokesperson for the agency said no violations were found.

VAOT Rail Division Director Dan Delabruere noted: “The jurisdiction lies with the FRA, not with the state, on how things move and what moves, so the state really doesn't have any jurisdiction whatsoever … .

“All the regulations are at the federal level … [Residents] would have to change federal law, which would be, you know, a long process. But that would be their only avenue.”

After they complained to Charlotte officials, one local family got a letter from a VRS lawyer which concluded: 'In sum, the car storage of which you are concerned will continue in that location until they are moved in the ordinary course of our railroad business.'

Mini-editorial: Are the complaining residents burning only wood heat and riding horses to the grocery store? Electricity, they may correctly say, is partially generated by burning wood chips at the Burlington Electric station [see upcoming article on Vermont State Rail Plan].

THE CARS FROM LEVIS
One of the cars on the siding (pictured in a photo on the Vermont Public Radio website), CGTX 30024 (GATX Rail Canada mark), was placed in Charlotte empty on 25 May. Its eventual destination, Levis, indicates the cars were used to deliver a petroleum product from the refinery in Levis, Quebec. {e-mail from colleague 23.July.15}

David Wulfson comments
David Wulfson, VRS president, noted he needs tank cars on hand for high winter demand. “And unfortunately sometimes they need to sit around in the summer time waiting for cold weather.” He has little access to storage
MONEY IN STORED CARS

On 28 July, Saratoga & North Creek Railway President Ed Ellis (also president of parent company Iowa Pacific Holdings) informed leaders from Warren County and the town of Corinth — which own some of the rail line on which SNCRR operates — of plans to store superannuated tank cars. “It will be logical that people will ask, ‘What’s in those cars?’” Ellis said. “The answer is, ‘They’re empty.’”

Ellis said 300 to 500 empty tank cars will arrive in coming months, a few of the tens of thousands of tank cars taken out of service recently because of changes in safety regulations. Owners prefer to store them instead of retrofitting them to meet the new safety standards. If not eventually retrofitted, they will go to the scrapper, and not remain in storage indefinitely.

The cars may have a small amount of material inside them, which will require that hazardous materials placards be placed on them. But all will be inspected and some cleaned before being brought to the region, Ellis said. The cost to clean the cars, about $3,500 per car, may mean that not all will cleaned. Any fumes that remain will not be a hazard, and the tanks will be locked.

“There is no record of an empty car having any problems with nothing inside,” he said. But he “wouldn’t want to climb down into one and eat lunch.” No state or federal environmental approval was needed.

Place of storage; income

The cars will be stored on railroad sidings near the hamlet of Tahawus in Essex County, in a remote area near former stone and lead quarries in the town of Newcomb, well off traveled roads, in a region that is mostly wilderness.

The storage could create “seven-figure” revenue for SNC, said Ellis.

Comments

County supervisors, Corinth board members, and their municipal lawyers quizzed him on details, asking about cleaning, security, how long they would be stored, and the county’s liability.

Warren County supervisors tentatively approved the proposal, pending legal review, although County Attorney Martin Auffredou pointed out that the county’s contract with the railroad likely does not require any formal permission.

Newcomb Supervisor George Canon said he has a meeting planned with Ellis later this week to discuss railroad issues. “The first concern is to make sure there isn’t any environmental danger,” he said. {Don Lehman in poststar.com 28 July 15}

But not in New Hampshire

Despite the miles of unused track owned by NHDOT, the department has barred any future operator of the Mountain Division or Conway Branch from using any of it for car storage [see 15#06B] possibly because NHCR's doing so aroused the ire of residents [see 15#05A].
tracks. “And quite frankly, I don't have any other place to put them. I'll take that back, I could put them on the waterfront in Burlington. That's the only open track I have and I'm trying not to do that.”

Wulfson noted he can say little publicly about the transport and storage of hazardous materials. “Thanks to 9/11 and the TSA, we're not longer allowed to share that information with anyone” except emergency management officials.

At the state level, the hazardous materials team can request that information from the railroad. The state is now working on a software system that would automatically update officials with the location of hazardous materials. And the state does have the authority to step in and oversee hazardous materials where they are stored. {Taylor Dobbs in Vermont Public Radio}

Safety?

‘it’s astounding that folks who profess to be concerned about rail safety would pose for photo shots on an active railroad track!’ wrote John Dunleavy, assistant attorney general for VAOT, upon viewing the photo here. {e-mail to ANR&P 27.July.15}

TWIN STATE RAILROAD: AN UPDATE

The Vermont State Rail Plan, draft of June 2015, states:

'Until 1999, the Twin State Railroad operated over a route connecting St. Johnsbury with Whitefield, NH that was once part of the former Maine Central’s Mountain Subdivision between Portland, ME and St. Johnsbury. Embargoed and out of service, the estate of Clyde Forbes continues [to believe it holds - editor] operating rights leased from its owner, Pan Am Railways [subsidiary Maine Central Railroad]. The legal status of these rights is unclear [see 07#11A], and little effort has been made by the parties involved to resolve the issue following Mr.
Forbes' passing in 2011. {page 20}

**Golden Eagle interest**
NHDOT is offering its Mountain Division line to potential operators. One of the interested parties, Golden Eagle Railway would like to operate in Vermont as well [see 15#07A], over the TSRD.

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**MARITIMES**

**HALIFAX: IMPROVING?**
27 July. *IN 2Q15, THE SLIDE OF TEUs AT THE PORT NEARLY STOPPED*, though tonnage continued to decrease.

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**HPA comments**
Although Halifax has had a difficult cargo cycle in the past 18 months, there are indications things make change for the better, wrote the HPA’s Lane Farguson. 'There are positive developments anticipated to take place at the port in the coming weeks including the G6 Alliance adding an outbound call to its existing AZX service (Asia Suez Express).'
{Lane Farguson in an email to ANR&P correspondent Tom Peters 27.July 2015}

**MEANWHILE...**

Port of New York/New Jersey container volumes rose 13.4% in first half 2015. “We’re reaping the benefits of a strong regional economy and labor uncertainty on the West Coast,” PANYNJ Port Director Richard Larrabee said.

PANYNJ handled 3,093,789 TEUs in the first six months of the year. {Chris Dupin in Journal of Commerce 28.July.15}

The G6 cancelled four September sailings because carriers on the poorly performing Asia-Europe trade route struggle to achieve profitability with a surplus of capacity and low demand. {28.July.15}

**Larger ships coming in added calls**
HPA’s Patrick Bohan explained that Hapag-Lloyd (one of the G6) will have its Budapest Express call Ceres Terminal inbound from Suez 4 August at 8,749TEU the largest container ship to ever call Halifax. Returning, it will make the additional call in Halifax enroute to Suez.

“A strong import and strong export call adds a lot of options for moving equipment around and also coming up U.S. coast provides an opportunity to bring in empty reefers [refrigerated containers] for the seafood trade out of this region.”
A few days before Budapest Express, CMA CGM’s 8,238 TEU Vivaldi will call Halterm for the first time. CMA CGM is adding Halifax to its Columbus loop through the Suez. {Discussions with Peters 28.July. 2015}

Non-containerized cargo up 91%
Non-containerized cargo rose 91% in 2Q15 to 125,284 tonnes versus 2Q14’s 65,520 tonnes. Farguson explained it “is influenced by heavy lift project cargo through Richmond Terminals. And while non-containerized cargo tonnage is less than that of containerized cargo which can result in large fluctuations between reporting periods, the $129 billion in planned or developing mega projects in Atlantic Canada shows there is significant potential in this category of cargo.”

He added that since the first vessel call at the upgraded Richmond Terminals in October, 2014, Pier C has seen 144 days of berth utilization to June 30, 2015. This includes traditional berthing, vessel repair calls, special projects and five significant heavy lift moves during that time frame. {Farguson in email to Peters}

Overall tonnage down
All-HPA tonnage was down 7.1% and overall tonnage at both HPA facilities and non-HPA facilities for the first six months of 2015 declined 4.6% from 2,088,962 metric tonnes in 2014 to 1,992,113 metric tonnes in 2015. {HPA website}

RAIL FREIGHT FACILITIES

Described in this issue.
Borden (MC, Massachusetts) IRAP award.
Catania Spagna (Pan Am, Massachusetts) IRAP award.
Global (CP, New York) Safety violations.
NEPW (Pan Am, Maine) Thriving in Scarborough.

PEOPLE

Jean-Marc Bissonnette is the new Head of Rail Service at the Quebec Ministry of Transportation, succeeding Kevin Bouchard.