*Article unchanged from e-bulletin.*

++Blue type in article: changes from e-bulletin.

Blue header & table of contents: new article

REGIONAL

CN-Saint John-NBSR?: First Canpotex train; could CMQ move the traffic?

CMQ: Update (partial) on progress after taking over from MMA. ++

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3. Numbers on carloads,
4. New customer service.
5. Intermodal and auto traffic to come?

NECR v Pan Am:STB procedural decisions.*

Railcar storage: Prices as high as $30/car/day.*

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[No report.]

QUÉBEC

CMQ: May purchase or lease former CP yard in Sherbrooke to deal with noise complaints.

CMQ: Will lease land to help Orford Express.

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PW: Shipper Hopkins adds new siding.

MAINE

Pan Am Maine: South Portland considers challenging Pan Am on pre-emption.*

Maine crude disclosure; Did the Legislature adhere to its own statute, balancing public and private interests?*

MDOT: TIGER construction to start in 2016.*

Pan Am: New Riverside scrap transload in Jay.*

Eastport: Chip export move ever closer.

Eastport: May import salt for New Brunswick.

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NEW HAMPSHIRE

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RHODE ISLAND

Davisville-Quonset: Governor proposes $70 million bond issue to spruce up Pier 2.*

VERMONT

VRS: Town looks ready to fight against federal pre-emption for the Shelburne salt terminal.*

MARITIMES

[No report.]

RAIL SHIPPERS/RECEIVERS

A cross-reference to companies mentioned here.

PEOPLE, POSITIONS, EVENTS


EDITORIAL

Shippers should ask three questions about location.

FROM THE PUBLISHER

Congrats

Nice work by Dave Sherwood on the crude disclosure story.

- Chop Hardenbergh Next formal issue 2 March.
CN-SAINT JOHN-NBSR?: POTASH TRAFFIC

15 February, Yarbo, Saskatchewan. THE FIRST CANPOTEX UNIT TRAIN LEFT SASKATCHEWAN FOR SAINT JOHN.

Such traffic has emerged because PotashCorp is ceasing to operate its potash + salt mine in Picadilly [see 16#01A]. As Randy Burton, spokesperson for PotashCorp said, his company will continue to serve its customers in the Caribbean and the east coast of South America by having Canpotex supply them out of Saint John. Until the mine closure, PotashCorp had served those customers itself.

Canpotex spokesperson Natasha Stinka noted: ‘Up until recently, PotashCorp serviced a few of their own overseas customers from New Brunswick. Now those customers will be serviced through Canpotex – all overseas customers for Canadian potash will now be serviced through Canpotex. Canpotex takes ownership of the potash needed to serve our customers at the mine site, Agrium and Mosaic do not have overseas customers for potash.’ [That is, all potash, now including that going out over Saint John, moving overseas is sold through Canpotex. editor]

Who is Canpotex?

Canpotex, short for Canadian Potash Exporters, is a Canadian potash exporting and marketing firm, operating since 1972. It manages the entire Saskatchewan potash exporting industry (excluding Canadian and US sales¹), including transportation and delivery. Canpotex is the world's largest exporter of potash, selling over nine

Saint John harbour. Showing the potash terminal and the lines of potash cars. {ANR&P}
millions of tonnes of potash in 2008, representing about one-third of global capacity.

Canpotex is wholly owned by: Potash Corporation of Saskatchewan (PotashCorp), 54% of potash exported; The Mosaic Company, 37%; Agrium, 9%. {wikipedia}

Canpotex logistics
The majority of Canpotex product moves in unit trains west, from 10 mine sites in Saskatchewan through to port facilities in Vancouver and Portland (Oregon). Canpotex also sends small amounts of potash east, through Thunder Bay to the St. Lawrence Seaway. Stinka wrote that ‘Canpotex does not serve customers in Ontario and Quebec.’ This Thunder Bay potash is going overseas.

Storage capacity at the Ports of Vancouver and Portland, and at various warehouse facilities worldwide, allows Canpotex to maintain an inventory of various grades of potash to ensure timely delivery to customers in peak periods of demand.

Trains up to 170 railcars long carry approximately 17,500 tonnes of potash. Canpotex has approximately 5,700 railcars in dedicated potash service at any given time. {Canpotex website}

Current train
Rail observers report CN train B730 has 170 cars and 25,000 tons gross weight. It left Yarbo on 15 February and reached Reddit, Ontario on 17 February at 07h02. {e-mails to ANR&P}

Stinka noted that Canpotex markets 20 grades of potash. Individual cars contain only one grade, but unit trains may have cars with different grades. {e-mails to ANR&P 17.Feb.16}

Supplying the Maritimes?
Andrew Robinson, general manager of P.E.I. Agromart in Travellers Rest, Prince Edward Island, said of the closure of the Picadilly mine: “What it means is that the fertilizer blending companies like ourselves will be looking at all options, basically all around the world for potash. Whether it’s vessel-landed into the Maritimes or railed from western Canada we'll have to explore every option that's out there.” {Colin MacLean in JournalPioneer.com 11.Feb.16}

The potash terminal in Saint John
Saint John Port Authority owns the Barrack Point Potash Terminal, operated by PotashCorp and stevedored by Empire Stevedoring. {websites} PotashCorp has assigned the Terminal to Canpotex.

Could CP serve the terminal?
While the terminal is accessed by CN-owned tracks, NBSR serves those tracks, and in turn NBSR interchanges with CMQ, which in turn interchanges with CP. Could CP then serve the terminal?

The train which left Yarbo could have gone out on CP as well. Both CN and CP have direct rail to the Mosaic K2 mine in Yarbo. {editor}

Asked whether CMQ is looking at moving the potash, President John Giles wrote on 11 February: ‘We can always plan, work, scheme and hope for an outcome like that, but likely not in the short term.’ {e-mail to ANR&P}

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A 2003 EFFORT TO GET CP ACCESS TO SAINT JOHN FOR POTASH

In 2002, MMA, the CMQ predecessor, requested the Canadian Transportation Agency rule that CN’s refusal to accept a potash train originating in Yarbo from Canpotex arriving CP-CDAC-NBSR violated the interswitching regulations.

In its decision against MMA (successor to CDAC), the CTA stated:

{the following is taken directly from 03#08A}:

**The facts per MMA/B&A**
'MMA submits that CN acted in a manner tantamount to a refusal to permit a large shipment of potash to be carried by CDAC and interswitched to CN's line from the NBSR/CN connection in Saint John to the Potash Terminal in the port of Saint John in August 2002.

'MMA indicates that over the period leading to mid-August 2002, CDAC, in connection with CP, successfully negotiated an agreement with Canpotex, a fertilizer shipper located in Saskatchewan, to transport potash fertilizer from western Canada to Saint John, for exportation. Pursuant to the agreement, CP would carry the traffic from Yarbo, in the province of Saskatchewan, to Saint-Jean, in the province of Quebec, where the traffic would be transferred to CDAC, which would haul the cars to Brownville Junction, Maine, and then interchange it to EMR/NBSR which would in turn deliver the cars to CN at the CN/NBSR connection in Saint John, for delivery to its final destination at the Potash Terminal in the port of Saint John. [B&A] specifies that the only rail access to the Potash Terminal is over the line of CN.' ...

'MMA explains that in mid-August 2002, Canpotex gave to CP a block of 111 cars loaded with potash destined for the Potash Terminal in the port of Saint John. According to MMA, CN advised that it would not provide interswitching at the prescribed rates and would accept no liability for the train. MMA contends that because of CN's refusal to accept liability for the train, CDAC was unable to give NBSR a guarantee of revenue and, consequently, NBSR refused to accept the train.

'[B&A] indicates that Canpotex was then forced to make alternate arrangements with CN to transfer the traffic to CN at Montréal for delivery to the Potash Terminal at Saint John. Accordingly, MMA emphasizes that when the train arrived in Montréal, instead of being routed as previously authorized by the shipper via CDAC-NBSR, the traffic was rather diverted to CN for a direct delivery to the Potash Terminal.

'MMA submits that as a result of CN's refusal to accept liability for the train and its denial of access, CDAC lost a valuable business opportunity to carry and deliver potash from western Canada and, similarly, CN secured a valuable revenue haul for itself. MMA contends that CN had an obligation to interswitch the potash train arriving at the port of Saint John on a MMA routing under haulage subcontract with NBSR/EMR entered into for and on behalf of MMA.'

How can MMA/B&A force CN to accept the traffic?
The two parties tried three arguments, based on Canadian transportation law. Application for interswitching. Subsections 127(1) and (2) of the Canadian Transportation Act provide that:

'(1) If a railway line of one railway company connects with a railway line of another railway company, an application for an interswitching order may be made to the Agency by either company, by a municipal government or by any other interested person.

(2) The Agency may order the railway companies to provide reasonable facilities for the convenient interswitching of traffic in both directions at an interchange between the lines of either railway and those of other railway companies connecting with them.’

The CTA also states rates for the switching which the switching line, in this case CN, would have to pay. Unfortunately, the subsections cited above only apply if a physical connection between two federal railways exists. NBSR as a provincially-regulated railway does not meet this requirement.

No interswitching: Must be two federal railways. MMA argued that NBSR only acted as a subcontractor to MMA and previously CDAC, both of which were federally-regulated railways and hence a connection does exist. The Agency rejected this contention, noting in part that MMA had not sought a federal certificate of fitness to operate into Saint John.

Canadian law does not permit the right to interswitching to be extinguished when a line is transferred from a federal to a provincial railway, but in 1993-1994 CP abandoned the line which CDAC eventually acquired. Hence CDAC did not receive the line as a transfer.

Application for running rights. MMA also asked for the right to directly access the potash terminal via its subcontractor, NBSR.
Subsection 138(2) of the CTA provides that: ‘The Agency may grant the right and may make any order and impose any conditions on either railway company respecting the exercise or restriction of the rights as appear just or desirable to the Agency, having regard to the public interest.’

The Agency noted two problems with running rights. First, MMA has no way of exercising running rights over CN in Saint John, as MMA does not operate to Saint John. ‘During the exchange of pleadings, MMA indicated that, in the past, it has tried to negotiate a running right agreement with NBSR but the negotiations failed to materialize into a concrete agreement.’ Second, ‘the applicants did not file any arguments, other than the level of service complaint which will be examined below, indicating as to how the granting of running rights would benefit the public interest.’

Level of service complaint. Finally, MMA argued that CN had the obligation to accept the traffic which NBSR would have tended to it in Saint John. The Agency noted that a ‘railway company must provide, according to its powers, adequate and suitable accommodation for the receiving, loading, carrying, unloading and delivering of all traffic offered for carriage on its railway. Section 116 of the CTA confers upon the Agency the authority to investigate a complaint with respect to the level of service offered. If the Agency determines that a railway company is not fulfilling its service obligations, it may order relief.’

The Agency noted first that NBSR, not MMA, refused to accept the train. Second, that the customer Canpotex agreed with the change in routing to use CN from Montreal. Third, that Canpotex was not a party to the complaint. Fourth, MMA only acquired the assets of CDAC, and not the right to complain, so the Agency ‘seriously questioned the right of MMA to file such a level of service complaint.’

But the Agency cast those points aside in making its decision, relying on the fact that MMA and B&A failed to provide any evidence that, as MMA alleged, CN refused to accept liability for the train. ‘Accordingly, the Agency concludes that there was no conclusive evidence that CN breached its common carrier obligation to provide adequate service.’

Conclusion
The Agency dismissed the application. {Decision No. 472-R-2003 14.Aug.03}

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4. New customer service.
5. Auto and intermodal traffic.

1. THE OPEN HOUSE & TONE
The Open House, crowded with a who’s who among CMQ officials and customers, celebrated the new offices on Main Street in Bangor, adjacent to the Pan Am line. John Giles, president, said that CMQ had only leased the building at Iron Road in Hermon. He and others found it run down and redolent of past failures.

The new offices, also leased, provide about the same amount of working space. Operations such as yard masters, who are equipped with tablets, operate out of yard offices. Dispatching is outsourced [see 15#09A].

Giles also expressed enthusiasm about growth and working with other railroads. “We want to treat
everyone with respect” and as a result he has excellent relations with all connecting carriers. \{ANR&P coverage\}

2. EMPHASIS ON SAFETY

While railroad officials made no formal presentation at the 27 January open house, a power-point presentation provided afterward put out a positive picture:

The “CMQ way”
‘Our entire team is focused on the “CMQ Way”: A strong emphasis on safety and training while providing the highest levels of customer service and focusing on keeping our “head in the game” while running a productivity-based railroad.’

Safety: 2015 safety award
CMQ has:

- conducted safety stand-downs of all employees when we assumed control of the railroad [see 14#05A].

-Volunteered to be the first railroad to participate in an RAC (Railway Association of Canada)-led survey of our entire team to assess the status of our safety culture. We suspended operations while the survey was conducted
- Key operating practices that yield safer results:
  - Established and implemented maximum speeds of 25 MPH for all subdivisions.
  - Stringent securement policy for equipment left unattended.
  - The practice of “kicking cars” and getting on and off moving equipment is not permitted.

CMQ was awarded the RAC’s 2015 Safety Award for our participation in the Safety Culture Assessment.

Training. ‘All employees receive annual rules training as opposed to our predecessors’ triannual approach. Training is conducted in a “classroom” setting to encourage participation which fosters a learning environment. We focus on the basics and work with industry professionals to help us perform this training’ from CROR, CANAC, Transportation Certification Services(US/PQ), and BNSF/NARS training in Overland Park, Kansas for locomotive engineer training.

3. NUMBERS ON VELOCITY, CARLOADS, CAPEX

3.1 Transit time improvement
When CMQ assumed operation from MMA on 1 July 2014, it had approximately 230 miles of mainline track restricted to 10 miles per hour. Transport Canada required the Sherbrooke subdivision to operate at 10 miles per hour for its entire 66-mile length until the end of 2014. [See 14#12A Quebec]. Other various temporary speed restrictions, due to a variety of conditions, were lifted as the conditions were improved.

The slow orders equated to 16 hours of delay over CMQ, most notably the 7 hours of additional transit time on the Sherbrooke Sub alone.

As of November 2015 this has been reduced to 2.45 hours overall delay, mostly a stretch of track near Millinocket that will be addressed when TIGER work is completed in 2016 [see Maine].

3.2 Carload growth
The bar graph shows that CMQ moved in 2015 roughly 22,575 carloads. Moreover, 4Q15 at about 5,725 cars was significantly above 4Q14’s 5,200. {estimates from bar graph}

<table>
<thead>
<tr>
<th>Subdivision</th>
<th>Hours Of Delay</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sherbrooke</td>
<td>7.00</td>
<td>0.58</td>
<td></td>
</tr>
<tr>
<td>Newport</td>
<td>4.00</td>
<td>0.28</td>
<td></td>
</tr>
<tr>
<td>Searsport</td>
<td>2.00</td>
<td>0.21</td>
<td></td>
</tr>
<tr>
<td>Moosehead Canada</td>
<td>1.00</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>Millinocket</td>
<td>2.00</td>
<td>1.38</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>16.00</strong></td>
<td><strong>2.45</strong></td>
<td></td>
</tr>
</tbody>
</table>

Previous carloads
In 2005, MMA moved 50,000 carloads in and out of Maine. By 2010 that number dropped to 30,000. [See 14#01A.]

In 2002, the year before MMA took over, B&A had 60,000 carloads and 400 customers. Forest products made up 60% of the business. The now-gone Great Northern mills in Millinocket and East Millinocket made up 30-40% of the traffic. [See 03#01A.]

[In 2012, the last full year of MMA operation, it moved 32,324 loads, according to former chair Ed Burkhardt.³ In 2013, the year of the Lac Megantic tragedy³, he estimated 20,00-21,000 carloads. {e-mail to ANR&P 8.Feb.16}]

When CMQ took over, it inherited only 50 to 60 customers [see 14#05A].

3.3 Capex 2016
³ MMA gave up the rail lines north of Millinocket in 2011 [see 12#08B] which were producing about 100 cars originating or terminating, plus 90 cars a week overhead for Fraser (now Twin Rivers).
⁴ MMA began moving unit crude trains in mid-2012. Let us assume that the January 2013 MDEP-supplied figure of 489,687 barrels is a representative month for late 2012 numbers. One crude oil tank car holds roughly 700 barrels, so MMA in January 2013 moved 700 cars. If the same held true for October to December 2012, then 2800 cars or a small part of the 32,324 carloads were crude.
CMQ plans [see map] to put in a total of 19,000 ties and replace 40,000 feet of curved rail. In addition, major work will occur courtesy of the TIGER grant from Millinocket to Searsport. {ppt presentation 13.Jan.16}

4. CUSTOMER SERVICE

New customer-tracking service

‘Our customers and connections are enjoying new levels of customer service:
- An intense focus on solicitation of new business, while partnering with our connecting carriers to optimize routes and improve pricing.
- Our customer service department is redesigned and has a concentrated approach to assist and monitor shipments from origin to destination.’

Result. At the open house, Chris Caldwell was especially enthusiastic about the customer service. He reported that the customer service offered by CMQ included not only tracking cars while on CMQ, but from origin to destination. That and other factors had led both Twin Rivers Paper and Irving Paper to send more traffic via CMQ. At Twin Rivers, ‘we are practically the house carrier.’ {ANR&P coverage}

5. AUTOS AND INTERMODAL

In the heyday of the Bangor & Aroostook System, under Iron Roads, the railway in cooperation with NBSR ran both autos and intermodal between Montreal and Saint John.

At the time of the Open House, Ratledge said, CMQ was moving neither. Auto contracts come up only every few years. He did not see intermodal on the horizon. [Intermodal the only growth in the US and Canada.]

Intermodal

B&A operated an intermodal terminal in Bangor, and another in Presque Isle. The B&A service ended before, or at the time of, the bankruptcy in 2002.

When MMA owned the track, for a few months it ran intermodal for Sunbury (a trucking firm owned by J.D.Irving), at a rate of five times a week in January 2004 [see 03#12B]. The western end point was created in the MMA Farnham yard [see 03#11A].

In January 2014, as Fortress was winning the bankruptcy auction for MMA assets, MMA chief Ed Burkhardt noted that MMA once provided intermodal service to Tropical shipping, CP-MMA-NBSR. ‘Our two partners had competing objectives, and the net result was we lost the movement.’

Intermodal across Maine for food and drink ran into US Food and Drug Administration requirements that were too onerous to meet, and MMA could not make that intermodal work either, Burkhardt wrote [see 14#01A].

Autos

MMA for some time handled Kia and Chrysler autos for CP. Until 2012, Logistec operated the unloading terminal on the Saint John waterfront. CP awarded the operating contract to NBSR, which built an auto terminal at its facility in West Saint John [see 12#08B]. Sometime later autoracks ceased to traverse Maine.

CN serves Moncton and Halifax auto terminal [see 13#04A].

12 February, DC. THE STB MADE SOME PROCEDURAL DECISIONS in this case, which began in

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5 That backs up an observation by a subscriber formerly located in Orono: ‘Reports from friends in the area suggest that traffic is a trickle on Pan Am now. The trains to/from Waterville are thin at best. With no more Old Town or Bucksport traffic and what appears to be a siphoning of traffic from NBSR and MNR to CMQ, there is not much to haul. A couple of dozen cars a day or less is becoming the norm. My guess is that if it continues, WANM and NMWA will go to three days a week soon. I have predicted that rails will be gone east of Waterville before the end of the decade, and I think I am on target.’ {e-mail to ANR&P 25.Jan.16} A WANM train on 23 January had 15 cars: 3 empty centerbeams, 3 FBOX boxcars, and 9 empty centerbeams. A trace showed the boxcars enroute to Saint John. {e-mail to ANR&P}

6 Total carloads for the week ending 13 February were 244,334 carloads, down 15.4% compared with the same week in 2015, while U.S. weekly intermodal volume was 260,814 containers and trailers, up 10.4% compared to 2015. {AAR}
**Judge to rule on discovery matters.** ‘The Board has signed a Memorandum of Understanding (MOU) with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, STB-assigned functions such as adjudicating discovery disputes between parties in cases pending before the STB.’

‘The Director of the Office of Proceedings, pursuant to authority delegated by the Chairman under 49 C.F.R. § 1011.6, is assigning and authorizing Administrative Law Judge Steven A. Glazer of FERC to entertain and rule upon discovery matters and to resolve all disputes concerning discovery in this proceeding. The purpose of this referral is not for the ALJ to resolve any underlying disputes regarding the appropriate methodology to be used for determining the value of the trackage rights line.’

**Interest rental component of trackage fee.** ‘The Board denies the request of New England Central Railroad, Inc. (NECR) for a preliminary determination as to the appropriate methodology to be used for one element [interest rental component] in calculating the trackage rights compensation to be paid by Pan Am Southern LLC (PAS) under a trackage rights order governing PAS’s operations over NECR’s rail line.’ {STB website, decisions page, Docket No. FD 35842}

**RAILCAR STORAGE PRICES**

5 February, The Woodlands, Texas. **CAR STORAGE PRICES CAN RANGE AS HIGH AS $30/DAY,** wrote Manny Tatavak, the manager of railcar brokerage eRail Commerce. His firm also brokers storage, though the prices are not listed on his website, he wrote.

Referring to the quote of $30/car a day [see 16#01B], Tatavak wrote: ‘This is highly dependent upon location of storage and whether cars are loaded or empty. $30 is very high, but not unheard of. I've stored cars starting from $4 - $25/day.’ {e-mail to ANR&P}

**QUEBEC**

**CMQ: A MOVE TO HELP SHERBROOKE?**

21 January, Sherbrooke. **STAKEHOLDERS MET TO DISCUSS COMPLAINTS OF NOISE,** at the office of Liberal MP Marie-Claude Bibeau. Among others, present were John Giles, CMQ president, Ryan Ratledge, CMQ chief operating officer, adviser David Price, Daniel Matte, CMQ publicist, and a representative of the MP.

Giles wrote on 16 February: ‘We are getting complaints from citizens living in Deauville, a few miles west of Sherbrooke. We have a siding that we store Akzo Nobel salt cars and empty sodium chlorate cars there. Citizens don’t like it and we have no practical alternatives at our disposal, thus the need to approach CP’ for ‘an economic solution. …

**Akzo Nobel, no space**

Matte said of the shipper: “They have room to store 36 cars on their land, but last week, they received 100 cars. They have no room to maneuver.” [See aerial.]

Giles added that the company has a car mover.

**City of Sherbrooke resolution**

On 20 January the City Council passed a resolution calling on CMQ and Akzo Nobel to take all measures necessary for the security of the line and to stop, in the very near term, switching cars on the siding in Deauville, near the road to Venice. Councillor Diane Delisle said CMQ officials have listen to complaints politely, but nothing has happened. She recognized the city has limited powers.

At the meeting the next day, CMQ officials were given the resolution
The approach to CP
Matte said, “We are committed to returning next week with some feedback from CP. We could use CP’s site if they are willing to lease it to us [at a reasonable price] – but the discussions do not guarantee an agreement with CP.”

He noted that preliminary discussions had been held with the CP in the past. “Now we have to talk to the real estate division of the company, as we were talking with the rail division in the past.”

Magog, Quebec. On 23 September 2015, this aerial finds at least 36 cars on site. The vacant tracks between the car strings and the building look to be able to hold at least 24 more cars. {ANR&P}

Deauville, Quebec. An MMA train passes over the trestle In Deauville, October 2013. Beyond is Lake Magog. {photo courtesy chinook7}
If the talks were successful, the CP tracks would require work. “[T]hey are not ready to receive trains. We could not do the work before March or April, and as we do not specifically know the terrain, we can not estimate the time it would take to restore everything.” {Jonathon Custeau in La Presse 20 & 21.Jan.16; 985fm.com 20.Jan.16}
The location of the siding and possible solution, plus customer
CP still owns much of its former yard in Sherbrooke [see map]. Giles wrote, ‘They are developing a price to lease or sell the requisite land to us’ and CMQ would shift the switching of Akzo Nobel cars back to Sherbrooke.

He added that the access to the CP yard would permit CMQ to access the shipper Supermetal [see map]. Moreover, CMQ also wants to open a transload there. {e-mail to ANR&P 16.Feb.16}

CMQ: ORFORD EXPRESS ASSISTANCE
19 January, Magog. THE ORFORD EXPRESS EXCURSION COMPANY SEEKS A LAYOVER SPOT FOR ITS TRAIN, reportedly in Magog. The service, which began in 2006 [see 06#09B, 10#05B] was halted in April 2014 because of a fire in one car; the operators plan to restart service this year, to operate at least between Magog and Sherbrooke.

Operators are considering two sidings, said Express spokeswoman Annie Brunelle. Space owned by CMQ near Merry Point was suggested by CMQ; it did have a third track which is either buried, or lifted, she said.

Also space exists for a siding in the area of Saint-Luc Street. However, several nearby residents have come out against the project.

She reported the burned car is rebuilt, and operators will start again in May. {Jean-Francois Gagnon in La Tribune 19.Jan.16}

Pointe Merry?
CMQ chief John Giles wrote on 16 February: ‘We intend to lease land to Orford so that they can locate their tie-up tracks adjacent to their new kitchen and near where they tie up their vessel. This will help them a great deal.’
{e-mail to ANR&P}

CONNECTICUT

PW: EXPANDED CUSTOMER
1 January, Plainfield. DONALD HOPKINS IS OFFERING A TRANSLOAD HERE, expanding his services. His new spur was finished this day.

Valley Railroad Services
Hopkins stated that he had added six acres of laydown to the existing seven, to handle products such as crane mats and lumber. His facility is “the farthest south” on PW which can handle high-wide loads. After that, railcars must fit through the limits of the Taft Tunnel.

Hopkins Fabrications
Inside the shed, Hopkins offers:

- car repair of private railcars for Schnitzer and Tilcon, under contract.

- structural metal fabrication, employing four workers.

Rail access
PW runs down the ConnDOT-owned branch, the former Moosup line, to serve both Hopkins and Rawson. PW switches the Hopkins cars.

History of the rail spurs
In 2003, Hopkins, who then operated an aggregate company, built the first spur [see 03#08A] parallel to the
PW-operated, ConnDOT-owned, Moosup stub (these are now the storage spurs shown on the map).


Rawson operated the quarry, loading cars on what are now the storage tracks. He then built the second spur (shown into the quarry) in 2009, and began using it in 2010 [see 10#08B New York].

In 2015, Hopkins built his own spur, giving him direct access off the Moosup branch to his shed. Northern Rail Services did the work, adding 1600 feet of track, a 100-foot trestle over wetlands, and two switches. He now has almost 3000 feet of track. {e-mails to ANR&P early Feb.16}

RAWSON
Next to Hopkins, Rawson operates a quarry. His grandfather started the aggregate business in 1947, but the first product did not move by rail until 2009, when PW began hauling it to New York [see 10#08B New York].

Rawson has his own locomotive on-site to switch his cars. PW spots them on either the storage track or the quarry track. {e-mail to ANR&P 10.Feb.16}

MAINE

PAN AM: WHAT PRICE A LAWSUIT?*
28 January, South Portland. NGL AGAIN REVISED DOWNWARD ITS STORAGE PLAN FOR PROPANE, in its second revision of the proposed transload facility in Rigby Yard. On 8 January, South Portland noted that existing ordinances required new fuel storage facilities to remain under 74,805 gallons of liquid propane. [See 16#01A.]

The latest plan retains the fixed tank with storage of 24,000 gallons, but provides that only eight loaded cars would remain at any one time for more than 24 hours at the terminal. Thus only eight cars would constitute fixed storage for purposes of the zoning ordinance, at 30,000 gallons each. ‘While operationally inefficient,
these activities will ensure zoning compliance and are a measure of NGL’s continued commitment to cooperate with the city,’ the new plan stated.

The revised proposal also addresses a variety of questions and concerns brought up by the city’s planning staff and residents about the project’s drainage, stormwater management and fire suppression systems, among other things. {Kelley Bouchard in Portland Press Herald 28.Jan.16; Alex Acquisto in The Forecaster 4.Feb.16}

1 February, South Portland. CITY COUNCILLORS DEBATED THE RISK OF A LAWSUIT RESULTING FROM THEIR PUSHBACK AGAINST THE NGL PROPANE TANK FARM, during their regular Council meeting.

New Fire Code language
Councillors gave unanimous approval to a first reading of amendments to the city’s fire code that would tighten restrictions on commercial propane facilities across the city. In particular, the new code would require more distance between bulk propane facilities and nearby homes, businesses, and other public spaces.

But federal pre-emption may come into play
Proponents of the fire code realize that if NGL is barred from creating its own facility, it can ask Pan Am to operate the facility for NGL. Some at the meeting asked the parties to come to a solution, rather than have pre-emption come into play.

Councilor Brad Fox, an opponent of the NGL plan, said the proposed fire code changes don’t go far enough. He said the point of drafting an amendment like this is not only to protect the city against NGL’s application, but to challenge the federal government’s rail yard oversight.

Jeff Selser, of Summit Street, asked the council to think about what’s at risk. “What you’re putting in play are these people’s homes and these people’s safety. Think about that,. Think about your insatiable desire to take on the Surface Transportation Board, and the fact that it appears to some of us that you’re using a neighborhood as a pawn.”

City attorney Sally Daggett said twice during the meeting that taking on the railroad and federal preemption would be an “uphill battle.” A victory for the city would be unprecedented, City Manager Jim Gailey added.

Councilors sparred over the ethics of possibly carrying the city into another lawsuit. “The public has a right to know whether we are stepping into a million dollar lawsuit and what those consequences might be,” Councilor Claude Morgan said. “Preventing federal preemption is paramount,” Mayor Tom Blake said. “I’m not afraid of fighting the railroad.”

Fire Code amendments could be challenged
The proposed amendments are ‘comprehensively drafted,’ with a ‘logical connection to the city’s legitimate regulatory authority to protect the health, safety and welfare of its residents,’ according to a 28 January memo from attorneys Kevin Conroy and Jesse Alderman of Boston-based Foley Hoag, the city’s outside legal counsel.

But the city puts itself at risk of being sued simply by instituting stricter regulations than established by federal law, they said, so it is likely that any new ordinance language ‘will be challenged either in court or before an administrative agency.’

The city wants to make the distance between any commercial propane storage or distribution facility 40 times greater than required by the National Fire Protection Agency and federal law. This range effectively zones out virtually all commercial propane facilities. The city did not intend that, Gailey said by phone 3 February. Legally, “we cannot do that. That’s why we need to go back and see if there’s another sliding scale we can use to reduce that number.”

Staff will continue working on the technical aspects of the draft and will present a refined draft at the 7 March meeting. {Alex Acquisto in The Forecaster 4.Feb.16}
MDEP: KEEPING THE OIL TRAINS SECRET*

10 February, Augusta. PAN AM INITIATED THE EFFORT TO KEEP CRUDE BY RAIL SECRET, said Mike Shaw, the state representative who initiated Bill LD 484. [Shaw follows freight rail. See 09#04A.]

Did the bill avoiding the required legislative process?
Maine’s 40-year old Freedom of Access Act (Title 1, Chapter 13, subchapter 1, 1 §434 et seq, requires the Legislature to compare the proposed exception to a list of 9 characteristics the exception should have:

§434. Review of proposed exceptions to public records; accessibility of public records
1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee.

If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction.

A proposed exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed. (emphasis added)

To ensure that the review required by statute is adequately performed, the review committee – the Joint Judiciary Committee – has a 12-point matrix to ensure each requirement is met. “I don’t have that piece of paper and can’t document that we actually did it,” said Peggy Reinsch, the legislative analyst who worked on the bill, referring to the matrix.

[However, Reinsch wrote on 12 February: ‘The Judiciary Committee did discuss the confidentiality and public interest issues in the proposed bill and the amendment they finally approved, which they always do when considering public records exceptions. I do not have a copy of the checklist that I usually fill out as a last step to recap the discussion and memorialize their decision, so I can only conclude that I didn’t make them reiterate their decisions in that format. I think their actions were in compliance with the statute, just not consistent with their usual practice.’ {e-mail to ANR&P}]

Some points of the required scrutiny

§434. Review of proposed exceptions to public records; accessibility of public records
2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred.

The review committee shall use the following criteria to determine whether the proposed exception should be enacted:
A. Whether a record protected by the proposed exception needs to be collected and maintained;
B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
C. Whether federal law requires a record covered by the proposed exception to be confidential;
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
H. Whether the proposed exception is as narrowly tailored as possible; and
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

Competitive disadvantage
Under §434(2)(E), the review committee should have examined, ‘Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest
Legislators failed to seek out opposing views, relying instead on industry lobbyists, railroad companies and Shaw’s own testimony, committee records show. First Amendment experts, environmentalists and state and federal railroad regulators were never consulted, leaving lawmakers with only half the story.

Also, Shaw’s written testimony implied secrecy was the only way to ensure railroads provided first responders with details about hazardous materials. But federal regulators already required railroads to report large shipments of crude oil and top USDOT officials had encouraged states to disclose that information. In an interview after the bill took effect, Shaw acknowledged: “I didn’t really know any of those details when I went into this.”

Furthermore, Shaw pitched his bill as a proposal to ‘increase safety,’ but federal regulators, including the Department of Homeland Security, had already vetted the risks and were unconvinced. ‘The Department finds no basis to conclude that the public disclosure of the information is detrimental to transportation safety,’ stated a notice published in the Federal Register in October 2014. Lawmakers in Maine never discussed the notice, the culmination of a two-year-long national discussion of railroad safety.

Not commercially sensitive. Shaw said disclosing information about trains carrying hazardous materials like crude oil put railroads at a ‘serious competitive disadvantage,’ a claim reiterated by industry lobbyists but unsupported by evidence, according to federal regulators and the courts. USDOT had already determined information about oil shipments was not “commercially-sensitive.”

**The Pan Am role**

On 25 July 2013, just 12 days after the Lac-Mégantic accident, Pan Am Executive Vice-president Cyndi Scarano objected to the requirement to report its crude moves to MDEP. But a new state statute removed any ambiguity about Pan Am’s need to pay [see 13#07B]; it took effect in October 2013, and MDEP told Pan Am it had to resume reporting that month [see 13#08B].

On 2 August 2013, Melanie Loyzim of MDEP wrote Pan Am: ‘Therefore, it appears that legislative action would be required to make such information confidential based on security concerns.’

In 2014, according to Shaw, a public safety officer from Pan Am approached him at work and raised the issue of keeping some records confidential. The bill was introduced, and passed in 2015 over Governor Lepage’s veto [see 15#11A].

**Public hearing**

LD 484 did have a public hearing. Scarano told the legislature’s Judiciary Committee that state emergency workers were increasingly asking for more details about shipments of hazardous materials and reiterated her point that secrecy would allow her company to “freely share information that will benefit emergency responders and the people of Maine.”

The committee’s research staff sought the advice of the Association of American Railroads, a Washington, D.C-based lobby group, according to a review of committee files, but state and federal regulators were never consulted.

“It went under the radar and all of a sudden, it was passed,” said David Madore, MDEP spokesperson, in December. “It was not something we were involved in.”

**Bill should be changed?**

For his part, Shaw, who resigned from the legislature in August because he moved to Freeport, encouraged his former colleagues to put in “some tweaks” so that some information, like total volumes of crude oil passing through Maine, once again would be made public. “Keeping them confidential was really never my intention.”

{Dave Sherwood of Maine Center for Public Interest Reporting}

**MDOT: TIGER UPDATE***

5 February, Augusta. *THE FOUR RAILROADS ARE WORKING WITH MDOT TO USE IN 2016 THE*
TIGER GRANT AWARDED IN 2015. Nathan Moulton, director of the MDOT Rail Program, wrote that the department is continuing to have great cooperation from our railroad partners [CMQ, Pan Am, EMRY and NMRY – see 15#10B and map]. ‘We are working with USDOT to finalize all our needed documentation for our grant agreement to begin construction in the spring.’ {e-mail to ANR&P}
PAN AM: NEW SCRAP CUSTOMER

28 January, Jay. IRAP FUNDS HELPED A SCRAP SHIPPER OPEN HERE AT THE FORMER OTIS FALLS PAPER MILL, said Leon Dorr, the project manager for Riverside Scrap.

Background – sister companies
Riverside Scrap, the only site with rail, is the latest of four scrap sites of Joe Clark III of Farmingdale. The other three, all in Maine: Clark’s Corner Scrap in Montville, Clark’s Eastside Scrap in Chelsea, and Clark’s Westside Scrap in Hallowell.

Recent history of Otis Falls Mill. Wausau Paper was operating the mill until 2009, when the Great Recession forced its closure [see 09#04A]. Wausau sold the machinery [see 09#09A] for salvage.

Otis Ventures, headed by Mary Howes and Tim DeMillo, bought the building in 2009 and “kept the existing railroad agreements in place” [see 09#10A].

Purchase of former paper mill in 2015
Otis Ventures decided to end its effort to redevelop the property, and sold the 22-acre property on 24 April 2015 to MAC Development LLC, owned by Joe Clark III of Farmingdale. Clark said at the time the property has development potential after the buildings are taken down. However, he's "not going to rush into tearing them down" and he would like to preserve some of the property. {MaineBiz 29.Apr.15}

On 27 July, the Jay Selectboard unanimously approved issuing junkyard and recycling permits for Clark’s, after they were led through a site visit by Dorr.

Concerns about noise and pollution which were raised at the meeting were allayed by the proposed operation as Dorr described it. {Bobby Hanstein in Daily Bulldog 27.July.15}

Getting the rail connection
Clark’s chose Jay for its rail transload, rather than a site nearer to Hallowell or Chelsea, because of the daily
service provided by Pan Am as it serves the Verso mill in Jay and the Catalyst mill in Rumford.⁷

He agreed that using the East Augusta running track would be closer, but service less frequent, adding that AIM had closed its Augusta facility.⁸ “It’s only 27 miles from Hallowell to here” on Route 17.

Pan Am, he said, was “elated” to get Clark’s as a customer, even with his anticipated 40-60 carloads a year. “It would be fantastic to do 100.”

By 10 February, Dorr was “shopping the market” to sell his scrap. He anticipated “in about a month” he would have some traffic moving.

He does have some scrap on hand he could move [see photos].

**Siding construction**

The MDOT IRAP (Industrial Rail Access Program) provided $90,000 to match the same amount from Clark’s. Dorr said his company did the ground work, and Eastern Maine Railway (EMRY) workers did the track work, with rail recycled from the yard.

Dorr noted that Clark’s had lifted the track in the yard [see aerial]. {ANR&P site visit 28.Jan.16; discussion 10.Feb.16}
EASTPORT: CHIPS EVER CLOSER

16 February. "THE NEW, FINAL PREPARATION FOR THE EXPORT OF WOOD CHIPS HAS STARTED," said Eastport Port Authority Director Chris Gardner. Larry Carrier, the operator of the bulk yard and supplier of chips, and Stephean Chute, the principal of Phyto-Charter which will export the chips, both will attend the Port Authority board meeting this evening [see 16#01B]. {ANR&P discussion}

EASTPORT: SALT IMPORT?

16 February. NEW ENGLAND SALT COMPANY IS DISCUSSING THE USE OF EASTPORT TO LAND SOUTH AMERICAN SALT, said Eastport Port Authority Director Chris Gardner. “Over the past year, [William Massow, New England vice-president of operations] has held discussion with the [port’s] bulk yard operator, Larry Carrier.”

Massow said earlier the plan came together quickly after he learned about the closing of the PotashCorp mine [see Regional]. “We're just looking to expand,” said Massow. “In the past, we didn't know if we could be
competitive.”

However, he still lacks an agreement with Carrier. The plan, he said, is to sign a contract this week to take over the space.

Salt still to come
PotashCorp will honour its salt supply contract with Cargill, said Mark Fracchia, PotashCorp president. In an email to CBC, Mark Klein, a Cargill spokesperson, said PotashCorp and Cargill ‘are working through current winter contract needs and continue to discuss their contract and relationship needs.’

The provincial government purchases about 140,000 tonnes of salt annually for use on its highways. All of it has come from the Picadilly mine. As well, many of the province's municipalities and a large amount of the salt used on highways in northern parts of Maine came from Picadilly.

Import and re-export
Massow saw no difficulty shipping salt across the border into New Brunswick. [PotashCorp salt has been trucked across from New Brunswick to Maine for decades. Editor]

The first ship, from South America, will bring 55,000 tonnes to Eastport. Massow noted it can accommodate large ships, has a newly constructed lay down area, and a new conveyer system and scales.

Joint use of the conveyor?
Gardner saw no problem in moving salt in and woodchips out. The system was “built for both inbound and outbound” product. {ANR&P discussion with Gardner 16.Feb.16; Connell Smith in CBC 11.Feb.16}

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**MASSACHUSETTS**

**GU: PELLETIZING AND PRE-EMPTION**

**1. BACKGROUND**

**Construction of the pellet facility**
The First Circuit opinion in October 2015 stated:

‘In 2008, G&U decided to expand its rail yard in Upton and develop it into a rail-to-truck transloading facility. As a part of that plan, G&U undertook to build a wood pellet facility that would receive wood pellets in bulk from hopper railcars and transfer them, after some processing and bagging, onto trucks.

‘G&U also entered into a Terminal Transloading Agreement with Grafton Upton Railcare LLC ("GU Railcare"), a part of Dana Companies, a group of companies with extensive experience in transloading bulk materials. GU Railcare was neither owned nor operated by G&U. GU Railcare was to operate the transloading services on behalf of G&U.

‘By the fall of 2011, G&U finished the wood pellet facility. At the facility, a vacuum hose is attached to hopper railcars carrying wood pellets in bulk and sucks the pellets through a system that removes dust from the pellets. The pellets are then moved to silos for temporary storage. Additional dust is then removed from the pellets, and the pellets are conveyed from the silos, placed in forty-pound bags, and stacked onto pallets, fifty bags to a pallet. The pallets are then shrink-wrapped and stored until they are loaded into trucks for final delivery to retail stores.’

‘Gang of 7’ resists pre-emption
‘The Upton Board of Selectmen concluded that the activities at the facility were preempted by the ICCTA, 49 U.S.C. § 10501(b), and did not seek to regulate them. However, on August 1, 2012, [seven] petitioners, who live near the facility (the ‘Gang of 7’ led by Diana Del Grosso), sought a declaratory order from the [Surface
STB consideration and decision

‘[The Gang of 7] argued that the wood pellet transloading operations were not "transportation" under the ICCTA because they were manufacturing activities. Second, they argued that GU Railcare was not a "rail carrier" under the statute. … {page 7}

‘On December 5, 2014, the Board issued a declaratory order. After concluding that the petitioners had standing to raise the preemption issue, the order declared that the Board had exclusive jurisdiction over the transloading activities in G&U’s facility because they constituted "transportation" by "rail carrier."

The Board concluded that the vacuuming, screening, bagging, and palletizing of the wood pellets were "transportation" and not "manufacturing" because, although those activities were "not essential" to transporting wood pellets by rail, they "facilitate[d]" such transportation by making it "more efficient." This was so because the activities allowed G&U to transport the pellets by hopper cars rather than boxcars.

The Board also distinguished the activities in question from manufacturing and commercial transactions because they did not "change [the] nature of the product," even though some of the activities, such as bagging, "may produce some value to the consumer." {page 8}

Gang of 7 appeals and wins

‘The primary issue on appeal is whether the activities at the transloading facility at the conclusion of a rail journey — that is, the vacuuming, screening, bagging, and palletizing of the wood pellets — constitute rail "transportation," and thus are not subject to otherwise applicable state and local regulations.’ {page 12}

The First Circuit concluded ‘the Board’s efficiency rationale goes beyond the statute and is beside the point. While "transportation" is "an extremely broad category," Pejepscot Indus. Park, Inc. v. Me. Cent. R.R. Co., 215 F.3d 195, 199 (1st Cir. 2000), not all activities connected with rail transportation are considered "transportation" under the statute.’ {page 15}

‘Under these circumstances, a remand is required to determine whether the vacuuming, screening, bagging, and palletizing facilitated the transloading of the pellets from the railcars to the trucks or was done solely for another, unrelated purpose.’ {page 18}

2. REHEARING DENIED

GU, the STB, and the United States all requested a rehearing, which was denied by the same judges who decided the October case.

The three argued that the STB’s interpretation of the term “transportation” should have been according more deference. On 5 February, the three-judge panel issued their opinion that they disagreed, and denied the rehearing. {First Circuit, case #15-1069}

3. SKIRMISHING PRECEDING THE STB’S RE-LOOK

On 8 February, the Gang of 7 wrote to the STB to present new arguments about the nature of the activity at the pellet transload. The Gang sent the letter on 25 January, before the rehearing was denied, but to the wrong address.

“Re-pelletizing” - a “fine” distinction

The Gang cited ‘the Verified Statement of Michael J. Polselli, Manager of GU Railcare, the entity performing transloading at the Upton Yard. His Verified Statement was attached to a Supplemental Reply, dated February 25, 2013, and it is in the Appendix prepared for the Court of Appeals at p. 477.

‘In his Statement, at p. 541, para. 5, Mr. Poselli testified that 'since December of 2012, broken pellets (sometimes referred to as "fines"), are separated by screens from unbroken pellets as the pellets are moved by conveyor to the silo, pressed together, and moved into the silos. (Emphasis added)

‘There is no mention of this new activity - which constitutes repelletization - in the text of the
Supplemental Reply. Thus, Petitioners simply missed this "announcement" by the G&U, instead relying on the earlier Verified Statement of Mr. Polselli, dated August 12, 2012, that the pellets are "not recycled or processed in any way for any purposes, including 'repelletizing.'" Appendix, at p. 273. The Petitioners also relied on the G&U's April 2012 response to questions raised by Upton's Railroad Fact Finding Committee. Vol. 2, p. 79 ("wood dust has not been reused or repelletized.")

The Court, therefore, denied the Petitioners the opportunity to argue that repelletization was yet another indicator that the G&U was conducting "manufacturing" - and not rail transportation – at its wood pellet facility. Because it was not raised before the Board, the panel ruled it was not properly before the Court. Decision, at p. 19. Importantly, however, the Court also stated: "we do not preclude the Board from considering this issue on remand." Id. Accordingly, I would like to call your attention to those documents in the existing record that equate vacuuming, screening, bagging, and palletizing, including repelletizing, with manufacturing unrelated to rail transportation. {STB website, filings page, Finance Docket 35652}

GU responds
On 4 February, GU attorney Jim Howard, who had received a copy of the Gang’s 25 January letter, responded and filed his reply at the Board.

‘If the case is remanded to the Board [it was, see #2 above], G&U intends to submit evidence and argument rebutting the Petitioners and supporting the same conclusion that the Board reached initially: that the transloading of wood pellets constitutes transportation by a rail carrier.

‘In these circumstances, for the reasons set forth above, G&U believes that the only appropriate course of action for the Board is to defer any consideration of the matters raised by the Petitioners' letter and take no further action unless and until the Court returns jurisdiction over the case to the Board.’ {STB website, filings page, Finance Docket 35652}

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RHODE ISLAND

PORT OF DAVISVILLE: $70 MILLION BOND

5 February, West Davisville. GOVERNOR RAIMONDO HAS PROPOSED A BOND ISSUE TO UPGRADE PIER 2 HERE. Snow postponed a public event, scheduled for this day [see 16#01A] at the port to make the announcement the event. ‘We’re are hoping to reschedule for early March,’ wrote port spokesperson Ted Kresse.

Record auto throughput
The announcement was based on the sixth record-breaking year for auto imports by sea.

Large number of ships
Northeast Marine Pilots provided the number of inbound vessels coming into Rhode Island ports and terminals via Narragansett Bay: 435. Davisville numbered its ship calls at 193 in 2015.

Work
‘Pier 2 is an earth filled cofferdam cell structure built in 1956. It was designed to last 50 years. Governor Raimondo’s proposed investment of $70 million through a general obligation bond will essentially rehabilitate and modernize the entire 16 acre pier. It will also create an additional berth for ships on Pier 2, so additional shippers can call to the Port. This prudent initiative will ensure the Port’s continued momentum. We’ll be sharing more details about the project as plans are finalized,’ wrote Kresse. {e-mail to ANR&P}

The announcement stated: ‘The proposed solution for Pier 2 is to install a new HZ style wall with grouted earth anchors drilled into the existing pier backfill. This will create "dead" man tie backs to anchor the
VRS: MORE RESISTANCE TO SALT

9 February, Shelburne. A PACKED GYMNASIUM-FULL ATTENDED A SHELBURNE SELECTBOARD MEETING ON THE SALT TRANSLOAD. Residents who spoke at the meeting were vehemently opposed to the project, with the exception of one man who questioned why the town had zoned such an environmentally sensitive piece of land for industrial use.

No additional salt
David Wulfson, VRS owner and a Shelburne resident, listened to residents’ concerns. The planned salt storage facility may be double the size of the Burlington facility, but that doesn’t mean double the salt will be shipped there. VRS officials said it and distribution contractor Barrett Trucking currently rely on a “just-in-time inventory scenario” where salt arrives by rail and is loaded directly onto trucks.

Increased storage will permit storage during the summer, rather than use just-in-time delivery for all salt use.

Traffic permit
VAOT is concerned about trucks using the Route 7 entrance. VRS representatives believed no traffic light was necessary, but a right turn lane for southbound traffic could be. VRS needs a state permit for construction that affects the state highway system. The review process for that permit will involve a traffic study and could result in VAOT requiring additional traffic mitigation measures.

Railroad officials and consultants argued the new site will not increase truck traffic through the town. They also said the company will pay for road improvements and noise mitigation measures to reduce the impact of trucks loading up and entering Route 7.

Stormwater permit
The federal approval process includes a stormwater permit review, which is delegated to the state Department of Environmental Conservation. In January the state ordered Vermont Rail System to stop pre-construction activity while its stormwater construction permit is reviewed [see 16#01B].

Money for lawyers, or for the town?
VRS general counsel Eric Benson painted the railroad as a small (by industry standards) family-owned company. He urged residents to work with VRS; ongoing litigation and other efforts to block the project would only limit the company’s ability to help the town adjust. “For every dollar that we spend fighting about this is one dollar less of what we might be able to contribute to the community,” Benson said.

That further incited the audience and town officials. “I’m sorry, but I’m going to have to respond. This board will not succumb to a threat. … We’re going to do what we think is right for the town,” said Selectboard Chair Gary von Stange, drawing loud applause from the crowd.

Money for a pre-emption attack
Crea Lintilhac, with the Shelburne-based Lintilhac Foundation, said the charitable organization has hired

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5 The $60 million sounds like WAY too much. The distance of the wall can’t be more than a half mile, and I can build new track for $1 million a mile. Kresse, asked whether he had any breakout of the cost for the new wall/bulkhead, would say only ‘as plans are finalized.’ But surely the governor did not pick the figure out of the air? Editor
6 Barrett is contracted by the salt supplier. For state salt contracts, the salt is owned by the salt company, which pays the railroads to deliver to the transload, and then pays a trucking company to deliver the salt to state salt sheds. Editor
7 Lintilhac’s mission: ‘The Lintilhac Foundation's central purpose is to support organizations that are making sustainable, positive change for Vermont's environment and its people and providing Vermonters the information and resources they need to control their environmental destinies.
environmental lawyers to better understand federal pre-emption. The foundation also hired a hydrogeologist to collect baseline water quality information from the LaPlatte River, to track any changes if the facility is built.

“Our hope is we can really slow this process way down,” Lintilhac said.

James Dumont, the environmental attorney the foundation hired, viewed pre-emption case law as far less settled than Vermont Rail System and its attorney would have residents believe. He pointed to the 2000 Vermont Supreme Court ruling that not all elements of the city’s zoning laws would be pre-empted by federal law, including traffic and salt runoff issues.

VRS attorneys have pointed to the Riverside case of 2005, in which the Second Circuit that VRS and its proposed salt shed did not need to go through the Act 250 process [see 05#04B] 

RAIL FREIGHT FACILITIES

Described in this issue.
Akzo Nobel (CMQ, Quebec) Needs offsite sidings.
Canpotex (CN, New Brunswick) Potash from Saskatchewan.
GU Railcare (GU, Massachusetts) Not “transportation”?
NGL (Pan Am, Maine) Tussling with South Portland.
Riverside Scrap (Pan Am, Maine) New customer.
Supermetal (CMQ, Quebec) New customer?
VRS salt (VRS, Vermont) Tussling with Shelburne.

PEOPLE, EVENTS

The Massachusetts Port Authority (Massport) Board promoted Lisa Wieland from acting port director to port director. She has served as acting port director since March 2015 and previously as Maritime’s chief administrative officer.

Previous office-holder Deb Hadden became acting port director in October 2012 and port director in August 2013.

On 6 February, Dick Currier, who assisted many short lines in the region, died. Tony Jewell wrote this obituary for ANR&P:

Dick, a lifelong student and fan of all transportation but especially railroading, earned his living in his early to middle age years as a project engineer for a wide variety of municipal and industrial projects.

Around 1990, Dick started getting involved with railroad work on carrier and industrial projects. On the carrier side, he was one of three partners who started up the Quincy Bay Terminal Railroad, a highly successful short line endeavor in Quincy, Massachusetts.

At approximately the same time, Dick managed several projects for Indus-Rail for the construction of the Nova Chemical railroad yard and related facilities in Indian Orchard, Massachusetts, off CSXT.

From these projects, Dick continued in unhurried but dedicated fashion to be affiliated with many different railroad endeavors. For his railfan side, Dick became a member and project manager and adviser for the Shelburne Falls Trolley Museum.

In New Hampshire, Dick worked by the side of Ed Jeffrey, helping to assist in the startup of the New Hampshire Central Railroad. Dick is still listed as the chief engineer of the NHCR today.

In North Creek, New York, Dick became a partner in the start up and operation of passenger trains on

and strong traditions of democratic engagement.’
the Upper Hudson River Railroad. Dick also performed a variety of consulting work for Chris Podgurski related to the Charles River Railroad examining freight potentials on the Millis Branch.

From the Charles River Railroad, Dick went to work with and for Podgurski in the development of the Cape Rail family including Cape Cod Central and Massachusetts Coastal Railroads. Dick became the chief engineer for the Mass Coastal when it became the successful operator for the MassDOT Cape lines in 2007.

In more recent times, Dick performed as a consultant engineer for his long-time associate Jon Delli Priscoli in the development of the reborn Grafton and Upton. And, once again, Dick is listed as the chief engineer for the G&U.

Wherever Dick went he had a very contagious positive attitude. Nothing was impossible. If somebody needed a study in a hurry about welded rail in Wichita, Dick could be trusted to have a 100-page tome with pictures in hand in the AM.

If you were involved with or were interested in getting involved with the world of railroading, Dick Currier was in your corner with an ever-ready smile and an outstretched hand. During his nearly thirty-year career in railroading, Dick easily made friends with gandy-dancers as well as presidents.

Dick Currier PE, Chief Engineer and his happy helpful ways are going to be sorely missed trackside.

**EDITORIAL**

Note on pre-emption
Readers may have noticed that the issue of local regulation of rail shipping facilities receives considerable attention in this newsletter. With the issue arising in Vermont (VRS salt shed), New Hampshire (Sea-3 propane), Massachusetts (GU wood pellets and NET transload), and Maine (NGL propane), certainly shippers who want to use the railroad must immediately face three questions.

First, will the local community dislike a rail shipping facility? Nearly every new facility in New England within hearing distance of a residence will encounter resistance. But the scrap transload in Jay [this issue] did not encounter anything like the Shelburne tar-and-feather atmosphere. Put it down to the working-class nature of an old mill town, and the need for jobs there.

Second, if so, should I the shipper ask the railroad to operate the facility and utilize pre-emption to box out local resistance?

Third, does my activity constitute “transportation” so I (or more precisely, the railroad) will win the nearly-inevitable court case on whether local regulation is pre-empted by federal regulation?

\[12 \text{I can vouch for this. Chop}\]
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Coverage
The newsletter covers the operating freight railroads and ports in New England, the Maritimes, and eastern Québec, as well as the government environment they function within. Coverage includes passenger rail and ships when relevant to freight operations.

Frequency and the e-bulletin
ANR&P appears at least four times a month. We send a formal issue twice a month, via post or e-mail. Between the issues, we send out the e-bulletin, only by e-mail. All information in the e-bulletin is included, and often updated, in the issue.

Stories not updated for the issue are noted with an asterisk. I urge readers to look at the issue’s updated stories (those without an asterisk).

Two asterisks indicate the story is updated with the blue font showing what is updated.

Readers building a personal archive of the newsletter should discard the e-bulletins. The newsletter archive on the web at www.atlanticnortheast.com is open to all.

Pricing
Subscriptions cost $495 for professionals, $125 per year for students, young and old. (Add $100/year for print issue). Introductory prices available. The e-bulletin, sent by e-mail at least weekly between issues, is free of charge to all subscribers.

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Purpose
Atlantic Northeast Rails & Ports, née Maine RailWatch (1994-1997) and later Atlantic RailWatch (1998-1999), is dedicated to the preservation and extension of the regional rail network. The editor believes that publishing news on railroads and ports spotlights needed action to preserve the rail network. The publication also imbues the region with a sense of an interdependent community, employing the network to move rail and port traffic. ‘No railroad is an island, entire onto itself.’

FORMAL E-ISSUE