REGIONAL ISSUES

MMA: Start-up planned by 1 December.
P&W: More coal to Mt.Tom from Provoport.
High-speed rail: public meetings on Boston-Montreal service.

CONNECTICUT

Construction debris: Update on permitted and planned rail-served facilities.
P&W: Future loss of sewage move.
Bridgeport/New Haven: Coal for Bridgeport trucked to Mt.Tom via New Haven.

MAINE

Rail Task Force: Decides on draft of recommendations.
Amtrak: MDOT plans for Brunswick. Great on-time performance of Downeaster, other points.
GRS: Fink on new intermodal train, state subsidy, Nissen and SAPPI service, other points.
MMA: [See Regional for operations in state.]
Mountain Division: Trail but no rail, yet.
Bucksport: Possible new transload.
Eastport: How Domtar traffic is split between rail and port.

MASSACHUSETTS

GRS: ST filing to discontinue Mystic Wharf operation. Wins attorneys fees in Ayer pre-emption case.
Boston: New COSCO service.

NEW HAMPSHIRE

MBRX: More on tourist train.

RHODE ISLAND

QPD: Description of auto facility.

VERMONT

Amtrak: Offering a contract expiring 31 March.
Rutland traffic down.

MARITIMES/QUÉBEC

CBNS: No decision on Cape Breton, but Bras D’Or numbers up. See SCR for bid to operate.
CN: Kyoto a push to commuter rail?
SCR: New access road begun. Emera asked for bids to operate, and seeks coal permit expansion.
WHRC: USG expanding gypsum facility.
Halifax: Selects 4 to negotiate on Fairview Cove.
Saint John: Scrap metal moving out.

PEOPLE, POSITIONS, EVENTS


EDITORIAL

The travesty of attorneys’ fee awards for asserting the right to some local regulation of railroads.

FROM THE PUBLISHER

New England Railroad Club
Due to the meeting of the club on 7 November, and my working for my favorite local candidates on 5 November, the next issue will come out in three weeks.

- Chop Hardenbergh  Next issue: 15 November
REGIONAL ISSUES

MONTRÉAL, MAINE, & ATLANTIC

18 October, Augusta Maine. MMA STILL PLANS TO START OPERATING ON 1 DECEMBER, the Maine Task Force on Rail heard from Ed Burkhardt, president of Rail World and the moving force behind MMA. In prepared testimony and in answers to questions, he said:

Workers
Hiring and qualifying workers is “the main reason for the timing” of the startup, he said. “The good news” comes from the balance between the number of applications from existing B&A employees and the number of positions available. The B&A had 260 positions in Maine, and MMA wanted only 200. During the past year 30 jobs were eliminated, and with the lowered retirement age (now 60 for railroads) and attrition, MMA has only about 200 applicants.

Those hired are asked for “more flexibility in the way they work, but that usually gets more people working,” Burkhardt told the Task Force. The benefits and compensation will not match those existing; “some will make more, a few will make less.” The employees will go on monthly salaries rather than get paid by the hour, “stuff out of the1920s.”

Committee members said they had received letters from employees welcoming MMA, and Burkhardt said he had heard the same in the three meetings he has held with employees.

Equipment
MMA will change out the locomotive fleet, buy some of the current cars, and lease others. That effort “will go past 1 December,” with very little remaining of the current fleet. IRR sold virtually all of the equipment to help pay for the purchase, and leased the equipment back at “much too high rates” because they did not have a tested creditworthiness.

Now, “we’re lucky have a depressed economy” so MMA can get better rates or prices. “That’s a central part of our business plan to reduce costs.” As an example, Burkhardt said BAR was leasing locomotives at $300/day versus current rates of $100/day.

MMA plans to purchase from BAR some older cars confined to on-line use. It will lease a more modern car fleet which Rail World has already identified. The Derby car shop will work on 300 of the leased boxcars to prepare them for use.

Burkhardt labelled the Derby repair shop “a real asset” for repairs to MMA’s substantial fleet of locomotives and rolling stock, including heavy repairs. “I would not advocate contracting that work out.” Instead, MMA will look for outside work.

The railroad will continue the B&A’s effort to upgrade the machinery, abandoned due to lack of money. And, MMA will heat the car shop for the winter time.

Management/ownership
The Task Force heard Burkhardt say MMA will make an announcement in a few weeks about senior management. Fred Yocum will play a role, but Burkhardt declined to divulge it.

Rail World will own 20% of MMA stock, and Burkhardt anticipated some 10-15 additional investors.

Developing traffic
Noting that the B&A lost about 20% of its traffic from the “base year” of 2000, Burkhardt said MMA would first focus on getting that traffic back, and stabilizing at that level. Then, it will continue the drive to get a higher percentage of the transportation market.

“If local industry is successful, we will be successful....We can do a thousand things to forge a close relationship with customers to result in higher business.” For example, Fraser Paper planned to rebid their transportation business this autumn. “We asked for a delay to let us get up and running,” and Fraser granted it. Fraser can ask for bids not only on the current business moving on the BAR, but also the business on CN. “We can bid for it in cooperation with CPR.”

In response to a question, he said MMA is not increasing any rates. “The market does not allow it. The paper industry is going through a hard time, and you don’t kick [a customer] when he’s down.” The customer will come back when times
Burkhardt acknowledged the importance of the Irving Group as a customer and an interchanging railroad. Irving Forest Products had an option on land for a plant at the Loring Commerce Center in Limestone, Maine, which does not now have rail. “They extended that option contract for six months, to see if they can get rail service. If not, they’re not going to develop there.”

MMA “went to Saint John [Irving headquarters] yesterday [17 October]...We started off very well with them, our objectives are very similar, and we need to work together.”

The CN trackage rights situation
Burkhardt described the relationship before the agreement in 1990 as a normal interchange of traffic [see 11 October issue]. CN made two-line rates in and out of Madawaska, and the B&A earned $1100 per car. With the B&A strapped for cash, CN offered a devil’s agreement: CN pays $5 million and CN becomes the serving railroad on paper. The haulage is done by BAR under contract at $500 per car. “That $5 million probably lasted a week or two, and the reduction goes on forever. “The trustee suggested he had the right to cancel that. I’m writing testimony right now [for presentation to the STB]. This situation is dangerous to the viability of a new company.”

The relationship with CPR
The Rail Task Force heard Burkhardt say that the MMA team had met with CPR. “They [CPR] made a lot of mistakes. When they left the area east of Sherbrooke, they put it out of their mind, and thought they did not have to worry. They forgot the area has an important feeder network. Now they’re aware because the whole feeder network is threatened.”

State assistance
Burkhardt listed three steps for state government, in addition to those mentioned earlier by Yocum [see 30 August issue].

Letter to the STB on CN. The Surface Transportation Board is considering the request to revoke the trackage rights agreement with CN. In DC, he said, politics count heavily. “From what I can see, Maine’s delegation, in particular its two senators, are well regarded.” Certain assistance from the political establishment here would help at the STB, for example a letter of support for the MMA/B&A position.

State Senator John Martin, co-chair of the Task Force, said the members could do that. “What about eminent domain” to take over the line? Burkhardt replied, “That would be a can of worms, though I love the thought.”

Funds. MMA/B&A already have received some funds to help track conditions [see 13 September issue].

Maine Railroad Tax. Burkhardt noted that if he did become successful, the state would collect 5.25% of revenues, based on the operating ratio. The original tax law had a credit for capital expenditures; if that credit operated, the tax is not burdensome, but the credit was capped in 1990 at $500,000 for the entire state. Speaking facetiously, he said: “Maybe rich railroads like Guilford are paying,” but MMA would like the tax reviewed. “It will be a real hit to our plan.”

John Martin noted that the cap was established in 1991, when the state was in horrible fiscal shape. He saw “no problem in lifting the cap” now.

New operating plan
MMA plans to move the operational center to Millinocket, with two trains a day starting there to run to Montreal. Service to Madawaska from Millinocket will increase from three times a week to daily. Burkhardt added that fueling and running repairs will occur there.

Traffic won’t rebound right away, he acknowledged, even with the additional trains. “We’ll have some small trains on day one, with very good service and lots of room for expansion. Customers have complained about slow trains and poor service; we want to address that.”

The general office will remain in the Bangor area. MMA will move out of the existing building, and is looking for a rental. “We favor downtown Bangor.” The present BAR headquarters building, which MMA did not purchase, is “rundown and will
require a lot of work to fix up,” said Burkhardt. “The business plan makes CDAC the major connection in and out of the state, as it has been.” MMA hopes to have a better relations with Guilford, and, Burkhardt noted, “we are happy to work with them, but our preeminent destination is Montreal. CPR is lending support to our efforts.” {ANR&P coverage via internet}

**PROVIDENCE & WORCESTER**

25 October, Providence. A COAL SHIP FROM VENEZUELA BEGAN UNLOADING. By 26 October PW had run two trains with 50+ loaded coal cars and others to Worcester. The railroad will move the product to Gardner for interchange with GRS [see 30 September issue: Rhode Island]. Mt.Tom is also receiving coal from Indonesia [see Connecticut]. {reports on observer network}

**HIGH-SPEED RAIL MEETINGS**

Public meetings to hear the findings of the high-speed rail study [see 9 August issue] of service between Boston and Montreal have been scheduled at the following locations: All meetings will begin at 6:30 p.m..

- **New Hampshire.** Tuesday, November 12, 2002 at the New Hampshire Department of Transportation building on Hazen Drive in Concord.
- **Massachusetts.** Wednesday, November 13, 2002 at the Greater Lowell Transit District Headquarters on Hale Street in Lowell.
- **Vermont.** Thursday, November 14, 2002 at the Pavilion Auditorium on State Street in Montpelier.
- **Quebec.** November 25 in Montreal. Location and time to be posted.

The second round of meetings will provide a review of the draft results and study recommendations. {http://www.bostonmontrealhsr.org/meetings.htm}

**CONNECTICUT**

**CONSTRUCTION DEBRIS BY RAIL**

**Permitted or proposed** [See previous discussion in 12 April issue]

- **American Disposal Service, located in southern Hartford, served by CSO, permitted for 295 tons a day.** The facility, at 143 Murphy Road does not now use rail. A CSO official said the company had ‘not contacted us officially yet and there could be some issues with Amtrak and their inflated costs dealing with new switches.’

- **Babylon LLC, located in Suffield, served by CSO, pending permit for 800 tons per day.** With permit in hand, the creators of this facility are apparently dragging their feet about starting construction. {e-mail to ANR&P from CSO official 22.Oct.02}

- **Willimantic Waste Paper Company, located in Willimantic, served by NECR, pending application for 250 tons a day.** Principal Tim DeVivo said the facility is already shipping scrap metal and paper by rail. On 21 October, DeVivo said he had received a permit for a facility on his existing property, but had then bought an adjacent piece of land with building which would serve the construction debris transload much better. Permitting for the new site is in process, though he had no anticipated date. “Call in the spring to hear good news.” {ANR&P discussion 21.Oct.02}

- **Circle of Life, located in North Haven, served by CSXT, pending application for 2,370 tons per day.** Developer Mark Bourgeois anticipates between 4,000 and 7,000 railcars a year [see 29 March issue]. It will go to a landfill in Ashtabula Ohio.

  On 22 October, DEP official Chuck Atkins said the briefs and information from the hearing had gone to the adjudication
unit. A hearing officer will write a recommended decision for the commissioner. The intervenors may then request an oral argument before the commission. While the department has no timetable for the process, the hearing officer may write the recommendation by the end of the month. \{ANR&P discussion 22.Oct.02\}

Capitol Transload, located in north Hartford, served by CSO, pending application for 600 tons a day. Mark Zessin of Anchor Engineering, who is designing this facility, did not return phone calls.

New Haven Waterfront. Gateway Terminal in the New Haven port is proposing a waste-to-barge facility. The Gateway proceeding awaits the issuance by DEP of a notice. The company is seeking a variance from the requirement that all construction debris facilities be enclosed. According to Chuck Atkins of DEP, Gateway plans to dump into an enclosed pan, and then move the material into an open barge. \{ANR&P discussion 22.Oct.02\}

COMMUTER RAIL

16 October. THE STEERING COMMITTEE FOR THE NEW HAVEN, HARTFORD, SPRINGFIELD COMMUTER RAIL IMPLEMENTATION PLAN met for the first time. A study conducted by Wilbur Smith [see 26 July issue] will evaluate ridership, impacts, and costs of providing commuter rail service from New Haven, to Hartford (with a connection to Bradley Airport) to Springfield. Consultants will look at both 'Cadillac' and 'Volkswagen' versions of the system.\{Transportation Choices Coalition of Connecticut Coalition Update 18.Oct.02\}

PROVIDENCE & WORCESTER

22 October, Middletown. PW WILL LOSE A WASTE CUSTOMER later this decade. Currently, the City of Middletown utilizes its own wastewater treatment plant, and rails the sludge produced by the plant to the Mattabasset section of Cromwell. A facility there processes sludge and incinerates it. PW moves two carloads a day Monday through Friday, or about 400 carloads a year.

New piping plans
According to Joe Fazino, chief engineer of Middletown’s Water and Sewer Department, the state Department of Environmental Protection is pushing regionalization of sewage treatment. Middletown plans to send all its sewage to the Mattabasset treatment plan using a pumping station, and to eliminate its own wastewater treatment facility.

At that point, the rail move will end. However, Fazino said pipe installation would take three to five years, maybe longer. The city contracts with PW on an annual basis for the rail move. \{ANR&P discussion\}

BRIDGEPORT/NEW HAVEN

24 October, New Haven. GATEWAY TERMINAL IS MOVING SOME COAL FOR MT.TOM via truck: coal from Indonesia for a test burn. To understand the move, begin with the strict state emission requirements which took effect in January, requiring the state’s coal-burning facilities to change their operation. Wisvest Connecticut LLC, which owns the Bridgeport Harbor Station and a gas/oil-fired facility in New Haven harbor [see table in 31 May issue], decided to change from domestic coal to low-sulfur, low-mercury ‘EnviroCoal’ mined in Borneo, Indonesia by the Adaro company.

The import operation
Since January, ships for Wisvest have arrived every 44 days in Bridgeport and offloaded most of their 80,000 tons at the wharf for storage at the power station. However, according to Tom Kirk of Wisvest Connecticut, Wisvest needs additional space, obtained by barging the remainder of the delivery to Gateway Terminal in New Haven. Gateway unloads the barge and stores the coal, reloading and barging it back as needed.

Kirk agreed that storing in Bridgeport would be slightly better, but once loaded on the barge, “whether it moves for a few minutes or a few hours does not matter much.”
Excess because of outage
In August, the Bridgeport coal plant had an unplanned outage which lasted a few weeks, stretching into the plant’s planned outage which will last until November. The few weeks of unplanned outage left Wisvest with extra coal, which it made available to Northeast Utilities and other companies for test burns. During October, according to industry observers, Mt.Tom received via truck some of the EnviroCoal. [NU burned EnviroCoal earlier, importing it through New Haven. See 30 January 2001 issue.]

The future for the Wisvest plants
Wisvest-Connecticut, a subsidiary of Wisconsin Energy, has a contract to sell the Bridgeport and New Haven power plants to independent power producer PSEG Energy (subsidiary of PSEG or Public Service Enterprise Group), marking PSEG’s initial entry into the New England wholesale power market. In addition to the coal-fired plant, the Bridgeport station has a 159MW oil-fired unit, and a 19MW combustion turbine peaking unit. {PR newswire} Kirk expected the closing to occur by the end of 2002. {ANR&P discussion 24.Oct.2002; e-mail to ANR&P from observers 19-21.Oct.02}

[Mt.Tom is receiving Venezuelan coal via Provport and rail this month. See Regional.]

MAINE

TASK FORCE ON RAIL
18 October, Augusta. AT ITS LAST MEETING, MEMBERS AGREED ON RECOMMENDATIONS to pass to the Legislature [see 11 October issue]:

- Continue to acquire rail corridors.
- Leave intact any state-owned rail pending action by the Legislature.
- Maintain and rehab lines according to a priority.
- Fines for overweight trucks should go to help the railroads.
- MDOT should add staff for railroads.
- Reimburse railroads fully for grade-crossing maintenance.
- Coordinate among MDOT, DECD, and State Planning Office to promote rail during economic development activities.
- Give the IRAP Fund $1 million per year.
- Pursue federal funding for extending passenger rail. {ANR&P coverage via internet}

[See Regional for MMA remarks (including state tax recommendations), and below for Amtrak and GRS remarks.]

AMTRAK
19 September, Yarmouth. PLANS FOR EXPANDING SERVICE TO BRUNSWICK were discussed by Ron Roy, head of the Office of Passenger Transportation at MDOT, during a breakfast sponsored by the Yarmouth Chamber of Commerce and the Yarmouth Historical Society.

Amtrak service to Brunswick
Service could start in late 2004. The environmental evaluation of the bridge over Back Cove continues.

Commuter service
After Amtrak begins serving Brunswick, with a stop in Freeport, MDOT would like to begin commuter rail service also from Brunswick. A commuter station with a large parking lot somewhere between Yarmouth and Falmouth would serve the area better than the downtown Yarmouth station, which has little parking.

But Roy said the department would consider a stop there, as long as the town supported a van service for residents who
lived too far from the train station. [Ron: By 19th century walking standards, no one in Yarmouth, except those on Cousins Island, lives too far from the train station! Editor] {Tom Bell in Portland Press Herald 20.Sept.02}

18 October, Augusta. **THE DOWNEASTER RAN 94% ON-TIME FOR FISCAL YEAR 2002,** NNEPRA Executive Director John Englert told the Rail Task Force. That made it #1 on-time in the Northeast, and the best record of a state-funded program. [Kudos to Guilford. Dave Fink said years ago GRS would run the best Amtrak service in the country, and the Guilford people have done so. Editor] Other points:

Some 11% of the operating budget pays for dispatching by the MBTA and Guilford.

Englert did not envision either mail or express providing revenue to the service. The Postal Service mail contracts cover distances of more than 750 miles. And neither Portland nor Boston has any facilities for forklifts to handle freight or mail.

As for a Portland-New York connection via Worcester, he noted the relatively small number of customers continuing past Boston: 7-10%.

**Guilford praise**

GRS Executive Vice-president David Fink told the Task Force that Englert called him after taking office. Fink asked Englert about a couple of small things that had been bothering him, and Englert took care of them that day. {ANR&P coverage via internet}

**GUILFORD RAIL**

18 October, Augusta. **DAVID FINK DISCUSSED SOME ISSUES** during his presentation to the Rail Task Force this day.

**Nissen Bakeries**

GRS runs eight cars a day of flour in and out of the new Nissen plant in Biddeford, from the flour mill in Ayer.

**SAPPI logs**

The plant in Hinckley now brings in logs from Aroostook County via the BAR in 20-car lots. Both the SAPPI and the Nissen traffic were aided by the Industrial Rail Access Program.

**Operations/labor**

GRS does all locomotive and car repair at its shop in Waterville. The railroad has 400 employees in Maine with a $20 million payroll. Unions are currently working under a five-year contract, one of the first in the industry. The railroad “is now negotiating [a renewal] for six years, and that’s going very well.”

**Waterville intermodal/new train**

The facility, now back on line [see 30 September issue], is “moving more trailers every day, and I wish we had more. It’s a difficult balancing act to move in empties.”

He opposed adding another train in Downeaster service. With eight Amtrak, 12 GRS trains, “when something goes wrong in the middle of system, it affects the entire schedule....If we had a double track, we’d have a different deal.”

Fink said GRS will start a dedicated intermodal train from Waterville, but did not give a date.

**State taxes**

Fink fingered the 6% sales tax paid on diesel fuel as much worse than the railroad tax mentioned by Burkhardt [see Regional].

**State subsidies**

“We never asked for them, we don’t want them, and we don’t want the state to give them out. They artificially change the market.” However, he said that changing the balance of power by giving some railroads money, and “not to us, was very upsetting.”
Amtrak longevity

Fink noted that the state has invested $135 million in rail, mostly in capital projects. “I fear that down the road, the bill will come due, the current financial success will change at the end of three-year contract [between NNEPRA and Amtrak]. Amtrak now charges $3 million and supplies free equipment.” There could be a substantial increase in the cost of service. {ANR&P coverage via internet}

MONTREAL, MAIN, & ATLANTIC

[See comments about Maine operations and locus of headquarters in Regional.]

MOUNTAIN DIVISION

22 October, Windham. TRAIL, BUT NOT RAIL, CONSTRUCTION HAS BEGUN. MDOT Commissioner John Melrose helped break ground on the first part of the trail between Portland and Fryeberg, a four-mile section in Windham.

When advocates first proposed the trail with rail [see 3 November 1994 issue], they spoke of reviving rail in the same breath. But at the groundbreaking, Melrose reiterated long-standing departmental policy that it has no plans for rail service along the line soon, with the state focusing on commuter rail service from Portland to Brunswick and Auburn. [See 7 November 2001 issue.]

He noted that groups have studied the possibility of light rail service from Portland to South Windham and talked about excursions along the Mountain Division line to North Conway and beyond. Also, the line could be used to carry gravel from quarries in Hiram and other areas north of Windham, reducing the large number of gravel trucks using the region's roads. {David Connerty-Marin in Portland Press Herald 23.Oct.02}

BUCKSPORT

25 October. SPRAGUE AND THE TOWN OF BUCKSPORT ARE CONSIDERING A MARINE INDUSTRIAL PARK at the site recently filled with dredge spoils from Mack Point [see map in 10 April 2001 issue and at www.atlanticnortheast.com]. Assisted by David Cole of Eastern Maine Development Corporation, David Milan who heads Bucksport economic development and Duane Seekins who manages the Sprague terminal at Mack Point are looking at different uses for the 15-acre site.

Sprague held onto the property because of the rail access and is considering an intermodal facility and warehouse to complement its new facility at Mack Point. Seekins said, “We want to keep our options open. We have access to Bangor and Aroostook at Mack Point. We’d like to have access to the Guilford line as well.”

Milan envisioned small boat-building companies, now driven inland by high waterfront prices, working cooperatively. The two partners will like to complete planning the site during the winter. {Rich Hewitt in Bangor Daily News 9.02}

Milan stressed that the site would not serve ocean-going ships. Rather, Sprague’s Bob Blanchard said, cargo unloaded at Mack Point could be trucked the 12 miles to Bucksport. Sprague may construct a small warehouse if the business of transloading onto Guilford railcars justifies it. {ANR&P discussion 25 October 2002}

EASTPORT

25 October. BOTH RAIL AND PORT DEPEND UPON DOMTAR TRAFFIC. When the pulp mill ships by rail, port traffic drops, and vice-versa [see table]. Spokesperson Gaile Nicholson said 85% is moving out via port, and NBSR has dropped its interchange with GRS in St.Stephen to once a week.

But, notes Skip Rogers of Federal Marine Terminal, the port operator, he has already exceeded the previous annual record of 215,000 tons. The most recent ship brought the 2002 total to 265,000 short tons. {ANR&P discussions 24&25.Oct.02}

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GUILFORD RAIL

20 March, Boston. **THE US DISTRICT COURT FOUND IN FAVOR OF GUILFORD** in its effort to decrease regulation by the Town of Ayer of its proposed new auto facility, adhering to the STB ruling [see 15 June 2001 issue].

Background

Since 1974, Guilford has operated an automobile unloading facility on a forty acre parcel of land in Ayer (the "Existing Facility"). The Existing Facility is located within a "Heavy Industrial District" as established by Ayer’s zoning bylaws. In 1997, Guilford purchased 126 acres of land, known as the San Vel site, across the road from the Existing Facility, also within the "Heavy Industrial" area.

Guilford [plans another]...the "New Facility"...located within [local aquifer areas].

Guilford commenced the approval process for the New Facility in November 1997. In May 1998, pursuant to Mass. Gen. Laws. ch. 131 § 40, Guilford filed a "notice of intent" with the Ayer Conservation Commission. Guilford then applied to the Ayer Planning Board for Site Plan Approval for the New Facility. On August 26, 1999, the Planning Board issued a Certificate of Approval for the New Facility (the "Certificate"), but made the permit subject to thirty-six conditions. On August 18, 1999, the Ayer Board of Health adopted new local regulations, authorizing it to designate certain occupations as "noisome trades" and to prohibit the practice of such trades within town limits. On November 17, 1999, the Ayer Board of Health declared that "an 'auto unloading facility' will be considered a noisome trade" under a Town of Ayer ordinance.

Guilford viewed the Certificate, with its thirty-six conditions, and the "noisome trade" designation as an Ayer strategy to keep Guilford from constructing its facility. On December 20, 1999, Guilford filed this lawsuit, alleging that the Town’s efforts were preempted by 49 U.S.C. 10501 (b), part of the Interstate Commerce Commission Termination Act of 1995 ("ICCTA") and the Supremacy Clause, and violated the Dormant Commerce Clause of the United States Constitution. Guilford seeks declaratory and injunctive relief, and damages.

In August 2000, the Parties filed cross-motions for summary judgment, and this court took those motions under advisement. At the suggestion of Ayer, this court referred the action to the Surface Transportation Board (the "STB") on October 19, 2000, and asked that the STB "evaluate the right of the defendants, if any, to regulate the plaintiffs’ proposed development of Willow Road in the Town of Ayer...[to assist] this court in determining the rights, duties, and obligations of the parties...."

On May 1, 2001 the STB issued its decision. The STB decided that Ayer’s actions were preempted, noting that Guilford had indicated "that it [would] take appropriate action to address the risk of pollutant leaks at the new facility." In response to Ayer’s argument that its regulation of the New Facility is not preempted because it is rooted in the Safe Drinking Water Act ("SDWA") and the Clean Water Act12 ("CWA"), the STB found that "the record here supports the conclusion that the SDWA and CWA are being used merely as a pretext." Accordingly, the STB determined that "Ayer’s Planning Board permit process, the ordinance determining that automobile unloading facilities are a ‘noisome trade’ or nuisance, and the Conservation Commission’s pre-approval process are all preempted under 49 U.S.C. § 10501(b) and the court and agency decisions interpreting it." Ayer filed a Petition for Reconsideration of that determination on May 21, 2001. On October 5, 2001, the STB issued a decision affirming its earlier decision that the ICCTA preempted Ayer’s actions....

Ayer argued, because the STB is "uniquely qualified to determine whether state law should be preempted." (Civil Action No. 99-12606-JLT (Judge Tauro) Boston and Maine Corporation v. TOWN OF AYER, et al., 20.Mar.02)

Award of legal fees

Following the decision in favor of Guilford, the GRS lawyers asked the court to award it legal fees, based on 42 USC 1983. That statute states in part:

**Sec. 1983. - Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law....

A companion statute 42 USC 1988 provides that the court may allow the prevailing party attorney’s fees. Through case law, the fact that a body politic has deprived a corporation of the right not be regulated falls under section
1983, and Guilford cited several cases in which attorney’s fees were awarded. Following the case law, Judge Tauro in a
decision on 10 June directed the Town of Ayer to pay Guilford attorney’s fees, which amounted to $287,000.

Appeal
Both parties in early autumn appealed the judge’s decision to the First Circuit Court of Appeals. {docket report on court
website}

18 September, DC.  **GRS FILED NOTICE ON BEHALF OF SPRINGFIELD TERMINAL TO DISCONTINUE SERVICE ON THE MYSTIC WHARF BRANCH.** {STB Docket No.AB-355 (Sub No.25X)} This filing is linked to the filing on the same branch for abandonment by the owner, the B&M Corporation; ST is the designated operator. Both fall under
the umbrella of the Guilford Rail System.

A review
GRS filed on 20 July 2001 for permission to abandon, but the STB found the filing inadequate [see 31 August 2001 issue]. The
STB found a second application adequate, and permitted abandonment [see 16 January 2002 issue]. Massport was seeking
a public use condition [see 19 November 2001 issue].
Abandonment would not negatively the environment, the STB found [see 10 October 2001 issue].

Massport opened negotiations with Guilford to buy the branch. Massachusetts Coastal Zone Management postponed
initiating formal review of the impact to learn whether Massport would succeed in the purchase. [See 12 April 2002 issue.]
On 28 August Massport hoped to complete the purchase soon [see 30 August issue], despite the passage of the 180 days
permitted for the two sides to reach an agreed price.

Sale of the branch
Mike Leone, head of Massport’s maritime division, expected to complete a purchase and sale agreement for the branch by
mid-November. {ANR&P discussion 25 October 2002}

**PROVIDENCE & WORCESTER**

24 October, Worcester. **RAND-WHITNEY IS CONSIDERING EXPANSION OF ITS AGRAND STREET FACILITY,**
according to plant manager Edward Davis, and has an option on part of the Greenwood Landfill parcel [see separate article].
Davis said that the plant rails in paper by rail from outside suppliers, and trucks in paper from a sister plant in Montville CT
to make ‘combined board’ (corrugated board).
Expansion would increase the output of the plant, but not necessarily the rail usage, said Davis. Another official said the
plant received about 10 carloads a month of roll stock from outside suppliers.

Understanding the Rand-Whitney Group
The Group consists of several facilities: the corrugated container manufacturing facility on Agrand Street, another corrugated
container plant in Newtown CT (also served by rail), a sheet plant (Rand-Whitney Container Northeast LLC) in Dover NH,
a sheet plant (Rand-Whitney Container Southeast LLC) in Pawtucket RI, and the linerboard plant in Montville CT.
The sheet plants make smaller quantities of containers using large sheets of containerboard manufactured in Worcester
and Newtown and moved by truck. Rand-Whitney also has an imaging center, and a central sales force, located at Agrand
Street.
Rand-Whitney Containerboard owns and operates the recycled linerboard facility in Montville CT. The product uses 100%
post-consumer waste fibers to produce 550 tons a day of OCC.
Rand-Whitney Packaging Corporation, located at Millbury Street in Worcester, makes protective packaging from foam,
wood, and corrugated cardboard. {ANR&P discussions 24.Oct.02}
RAND-WHITNEY PART OF THE KRAFT GROUP

Robert Kraft is Founder, Chairman, and Chief Executive Officer of the Kraft Group of companies based in Boston, Massachusetts. The Kraft Group is a private holding company comprised of companies in the paper and packaging industries, sports and entertainment, and private equity investing.

In paper and packaging the Group's holdings include International Forest Products; the Rand-Whitney Group, a manufacturer of corrugated containers with five facilities; and Rand-Whitney Containerboard.

In sports and entertainment the Group's holdings include the New England Patriots of the National Football League; Gillette Field, the largest entertainment venue in the six state New England region; and the New England Revolution of Major League Soccer. The Group's private equity investments are focused on the Internet with other holdings in international cable television and domestic CLEC and streaming video businesses. {International Forest Products website}

BOSTON

21 October. **THE COSCO ALLIANCE HAS IMPROVED ITS SERVICE TO BOSTON.** Formerly the four-line alliance (COSCO, “K” Line, Yang Ming, and Hanjin/Senator) called Boston as the last port on the US East coast enroute from Asia to Europe [see 16 January issue].

Now, the alliance will break that string into two, beginning in January 2003. It will call Boston as the last port in the United States from Asia, and then head directly back to Asia, making Boston the last port out.

The alliance will continue a European service, but no longer call Boston. The port has Mediterranean Shipping as a European service. {Yang Ming press release}

**Volume**

Mike Leone, head of Massport’s maritime division, said the Far East service is “doing very well, the volume is growing.”

**Support from users**

The Port of Boston Action Committee played a role in attracting the service. Leone said its chair, Bill Ciezinski, director of transportation for International Forest Products [see above], recently left the company and the group needs a new chair. IFP uses container service out of the port for forest products. {ANR&P discussion 25 October 2002}

NEW HAMPSHIRE

MILFORD-BENNINGTON RAILROAD

20 October, Wilton. **UPDATE ON THE PROPOSED TOURIST TRAIN.** Principal Stu Draper has purchased 2 rail diesel cars at a Vancouver auction and a former freight house on Main Street in downtown Wilton. He hopes to have the two Budd cars on display in downtown Wilton by mid-November.

MBRX, along with consultant Colin Pease, has been doing the track and grade crossing rehab project. Draper labelled his dream way ahead of schedule [see 30 August issue], and hoped to have trains rolling by the spring. {Gil Bliss in New Hampshire Sunday News 20.Oct.02}

RHODE ISLAND

QUONSET POINT/DAVISVILLE

25 October. **UPDATE ON AUTO PROCESSING AT DAVISVILLE.** Up until September, North Atlantic Distribution (NORAD) was handling only Subarus. Some arrive by ship and are off-loaded by John J. Orr Stevedoring. After processing
at the 65-acre facility (not including the port laydown area), formerly part of a naval installation, most of these are trucked to Westborough for loading on CSXT, destined for other parts of the United States. [See issues 99#03 and 99#05.]

Other Subarus, produced in Lafayette, Indiana, arrive by truck from Westborough and are processed in Davisville before delivery to New England dealers. [See 5 February 1999 issue.] Subaru will continue to deliver cars by ship to Boston for the New York/New Jersey area [see 30 September issue]. NORAD handled some Chrysler products in the past.

**Volkswagen arrives**

In September, Volkswagen began to shift its East coast delivery from Boston’s Autoport to NORAD [see 30 September issue]. P&O Ports New England offloads the autos, which are processed by NORAD. The additional 90,000 vehicles will produce a large increase for NORAD, which in 2000 handled only about 3000 vehicles arriving by ship (assuming one ton per car).

**Future rail**

Upon completion of the FRIP (freight rail improvement project) from Davisville to Pawtucket, PW can move tri-level autocarriers in and out of Davisville. The pending FRIP completion was one factor in Volkswagen’s move.

<table>
<thead>
<tr>
<th>vehicles imported</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Davisville</td>
<td>8000</td>
<td>9000</td>
<td>3000</td>
<td>n/a</td>
</tr>
<tr>
<td>Boston**</td>
<td>69,300</td>
<td>87,000</td>
<td>131,000</td>
<td>97,000</td>
</tr>
</tbody>
</table>

* Waterborne Commerce of the United States, US Army Corps of Engineers

**Rail improvements needed**

Bruce Hamilton of Seaview Transportation, the industrial railroad which switches the Quonset Point/Davisville rail customers, said the line trackage in the Commerce Park needs upgrading, and for most efficient switching of auto carriers, he’d like to have a rail yard [see 19 June 2000 issue and 5 February 1999 issue].

According to Hamilton, a request to put track improvements into the TIP failed. The upgrade would cover the line from the Amtrak switch to Davisville, and the spur to Quonset Point. {ANR&P discussion 4.Apr.02}

Mike Miranda, NORAD principal, said an effort is underway to improve rail to NORAD, so it will be ready when the FRIP is done. {ANR&P discussion 25.Oct.02}

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**VERMONT**

**AMTRAK**

September. **AMTRAK IS APPARENTLY OFFERING ONLY A NINE-MONTH CONTRACT** to VAOT, which would expire 31 March 2003. [See 11 October issue.] {NARP News 9.02}

**Rutland traffic down**

The Rutland station built in 1999 saw 17,114 passengers in FY02, 19,420 passengers in FY01, and 22,500 in FY00 (July 1999 to June 2000). {Brent Curtis in Rutland Herald 26.Oct.02}
QUEBEC/MARITIMES

CAPE BRETON & CENTRAL NS
11 October, Halifax. **THE BRAS D’OR MORE THAN COVERED ITS COSTS** during its third season running between Halifax and Sydney once a week. From June to mid-October, it offers tourists a 10-hour land cruise through the heart of Cape Breton Island. Complete with on-board tour guides, live entertainment and fine local cuisine, the train delivers a unique experience of this historic maritime region.

Ridership jumped 14%, and cost recovery reached 148%. {VIA Rail Canada press release}

Don MacLeod of Transport 2000 Atlantic estimated ridership for 2002 at 3000. {ANR&P discussion with Bert Titcomb of Transport 2000 28 October 2002}

23 October, Halifax. **THE UTILITIES AND REVIEW BOARD MAY DECIDE ON THE PERIOD BEFORE ABANDONMENT** for the railroad’s Cape Breton line by the end of the month, said Nancy McNeil of the Board. She explained that the board was making major decisions on Nova Scotia Power electric rates [decided this day to permit an increase of 3.3% versus the 8.9% requested by NSP] and gas distribution. {ANR&P discussion}

CANADIAN NATIONAL
11 October, Halifax. **MAYOR PETER KELLY HOPED THAT THE KYOTO ACCORD** can do what ten years of lobbying has not: bring a commuter train to Halifax. He and Scott Roberts of CN toured the tracks in Halifax.

The city must pay, including $6.8 million alone for the signal system. “Commuter rail, regardless of where it operates, is always expensive,” said Roberts.

Kelly said the cost of the signal system could derail the project. “The thing to do is say what is good for the environment in terms of the Kyoto Protocol, and what may be there in funding from the federal government to help reduce the greenhouse gases.”

The tour will result in a report to the Council. {CBC webposted}

SYDNEY COAL RAILWAY
11 October, Sydney. **CONSTRUCTION OF THE NEW ACCESS ROAD** was permitted by the municipality. It will permit Logistec to load coal directly into trucks on the International Pier for transport to the Point Aconi power plant. Previously the coal had to move via rail to Victoria Junction [see 30 August issue].

The province, via its Sysco ownership, will pay for part of the $2 to $2.5 million cost, and Emera (NSP parent) will pay for the rest. The Cape Breton Municipality will ultimately own and maintain it, and the public may use it upon completion prior to Christmas.

The road begins at the intersection of Routes 125 and 4, and parallels the rail line into the Sysco site, continuing to the International Pier.

Any traffic for Sysco?
Provincial Energy Ventures has still not landed any bulk cargo on its leased pier [see 30 September issue]. Head Ernie Thrasher visited a month ago, and reported transhipment should begin in the next few months. {ANR&P discussion with John Whalley, municipal economic development officer 23.Oct.02}

25 October, Sydney. **EMERA IS SEEKING SIGNIFICANT EXPANSION OF ITS COAL-HANDLING PERMIT**, which it recently expanded from about 10,000 tonnes to 60,000 tonnes. It has applied to increase that to 260,000 tonnes. As part of the proposed application, Logistec, which operates the coal assets, and Emera are conducting an information session on 25 and 28 October to show the equipment for controlling dust. If the application is approved Logistec will spend $5 million to $10 million in upgrades.
NSP senior manager of environment Terry Toner said he has heard different opinions, from support to outright rejection of the plan. “We are here to provide information and hear peoples’ concerns.” Toner agreed people would still like to see covered storage and the elimination of dust and noise. “We feel we have a design to reduce the dust and a plan to reduce the noise. We won't operate the trains at night.”

“We went door-to-door last week and the reception was good for the most part,” said Aage Karsten Roren, operations manager, Logistec. \{Cape Breton Post 28-Oct.02\}

28 October, Sydney. **EMERA DECIDED TO AWARD A NEW CONTRACT TO LOGISTEC** to operate its surface assets in Sydney, including the International Pier and the SCR. The initial contract for Logistec operation extended only for six months, with an option to cancel thereafter on 90 days notice [see 19 December 2001 and 15 March 2002 issues].

Emera asked Logistec, CBNS, and perhaps one other party to make a proposal for the operation. Over the summer, said Peter Touesnard, head of CBNS, his company put together a scenario to operate the International Pier with its limited laydown area [see 30 August issue–permit to increase from 10,000 tonnes to 60,000 tonnes obtained in April].

Touesnard now believes that Emera officials have decided to recommend to their board that Logistec keep the contract. \{ANR&P discussion\}

**A blow to the railroad**
On 25 October, Touesnard told CBC News that as it stands now, the rail line has absolutely no future on the island. The line carries only about 800 carloads a year between Port Hawkesbury and Sydney. On the other hand, business between Port Hawkesbury and Truro is booming with 28,000 carloads a year.

“The position that we find ourselves in is that, unless there is fairly substantial financial contributions from other parties, for example government, then we will not have any other choice than to discontinue service into Sydney.” If the railway could be supported in the short run, it could remain viable long enough to take advantage of possible opportunities in the offshore business.

Provincial Economic and Development Minister Cecil Clarke says he can't offer much information on that just yet. “Until the URB process concludes, it would be premature to comment on next steps.” Clarke added, though, that he will take the railway's case to the federal government, arguing that it has a key role to play in keeping the line open. \{Hal Higgins in CBC News webposted 25.Oct.02\}

**WINDSOR & HANTSPORT**
24 October, Windsor. **FUNGY GYPSUM IS ENLARGING ITS SHED IN HANTSPORT** and improving its loading facilities [see photo of shed in 6 October 2000 issue]. These moves, according to plant manager Kirk Hillman, will enable workers to load the new ship *Gypsum Centennial*, at 40,000 tons twice as large as the company’s other three ships. With a window of only three hours due to the enormous tides, Fundy must load the entire ship in that time. Hence the expanded shed will hold an additional 75,000 tonnes, and improved machinery will move the 40,000 tonnes in the three hours available.

**The corporate hierarchy**
USG Corporation has three businesses: wallboard, ceilings, and distribution. United States Gypsum Company runs the wallboard (trademark Sheetrock), and it has two subsidiaries in Canada. One, USG Canadian Mining, has two companies in Nova Scotia: Fundy Gypsum, served by WHRC, and Little Narrows Gypsum, not served by rail. A second, CGC (formerly Canadian Gypsum Company) operates one mine in Ontario, and wallboard plants in Ontario and Quebec, plus one in Port Hawkesbury purchased in 1998 from Louisiana Pacific. \{Natural Resources Canada website, 1997 report\}

Hillman said the Port Hawkesbury plant receives the gypsum rock from the Little Narrows facility, though in past years the Georgia Pacific plant also supplied some. [The Port Hawkesbury plant is now scheduled to close–see 26 July 2002 issue.]

**Where does the Nova Scotia product go?**
USG subsidiary Gypsum Transportation Limited out of Bermuda operates the four ships which transport the rock from Hantsport, Little Narrows, or Halifax to one of five wallboard plants: Boston, Stony Point NY (on the Hudson), Baltimore,
Norfolk, or Jacksonville. Bob Williams, a spokesperson for USG at its headquarters in Chicago, said which quarry delivered to which plant was determined entirely by logistics, since the rock was fungible. Each ship typically picks up its entire cargo at one port, and drops the entire cargo at one plant.

Except for White rock
Most rock for Hantsport comes out of the Bailey quarry [see 17 May and 31 May 2002 issues] and goes to Hantsport. However, the nearby Wentworth mine produces gypsum with very high reflectance, ‘White rock’. [See 17 May 2002 issue.] Some White rock, about 150 carloads a year, moves via WHRC to an interchange with CN at Windsor Junction, and thence to outside customers. The move occurs only during the construction season. {ANR&P discussions with Hillman and Williams 22 and 24.Oct.02} [Hillman also manages the CGC synthetic gypsum plant in Belledune.]

One of three gypsum companies in the province
Nova Scotia accounts for more than 75% of the country’s gypsum production. {Natural Resources Canada website, 1997 report} In addition to USG, Georgia Pacific mines rock in Medford on Cape Breton Island, and National Gypsum (Canada) mines rock at Milford on CN.

HALIFAX
24 October. THE PORT AUTHORITY WILL NEGOTIATE WITH FOUR FIRMS about the lease of the Fairview Cove Container Terminal, held by Cerescorp and due to expire at the end of 2002. “These candidates are four of the key terminal operators in the world,” said Karen Oldfield, President & CEO. “The quality of their initial proposals speaks to the commitment they are willing to make to the Port of Halifax and the long term growth potential at the Port.”

- Cerescorp Company, Montreal, PQ, /NYK (North America) Inc., New Jersey,
- CSX World Terminals LLC, Charlotte, North Carolina and Logistec Stevedoring Inc., Montreal, PQ, 
- P & O Ports North America, New Jersey
- Terminal Systems Inc., Vancouver, BC
{port authority press release}
Spokesperson Dawn Dalley declined to provide any timetable or end point for the negotiations. {e-mail to ANR&P}

CSX World Terminals, a subsidiary of CSX, operates in six Asia ports, one each in Australia and Europe, two in Latin America, and in Charlotte, North Carolina. It originated in March 1999 when Sea-Land Service reorganized into three separate lines of business: global container shipping (since sold to Maersk), international terminal operations and domestic liner shipping. {company website}

SAINT JOHN
24 October. SCRAP METAL WILL START MOVING OUT of the port in less than a month. Maritimes Metal earlier in 2002 leased laydown space on the west side of the harbor at Berth 11. Scrap started arriving in August by truck from the New Brunswick area, according to the port’s marketing director, Betty McMillan. {ANR&P discussion 10.Oct.02}

Captain Soppitt, president of the Saint John Port Authority, said the planned 100,000 tonnes of scrap will be weighed, classified, and inspected by Metal employees. “This will bring 10 new ship calls a year to the west side port, creating more than 40 ship-days per year.” {Port Progress 9.02}

Jean-Jacques Groulx, director of sales for the parent company, said the company will maintain an existing scrap yard in Edmundston NB, but most scrap will be gathered in Saint John, where the company intended to remain. He anticipated that the company in the future would use rail to bring in scrap.

More on Maritime Metals
The company forms part of societe nationale de ferrailles (SNF), a private Laval-based company now 30 years old. SNF subsidiaries also export scrap via Montreal, Quebec, and Cacouna. {ANR&P discussion 24.Oct.2002; SNF website}
EDITORIAL

TWO TRAVESTIES

In June, Guilford won attorneys’ fees of $287,000 against the Town of Ayer because the Town attempted to regulate Guilford’s proposed auto unloading facility. I fervently hope the the Court of Appeals overturns this decision, for two reasons.

First, awarding of attorneys’ fees can only chill the inclination of any other body politic to regulate a railroad, this when the case law remains unsettled about how much local regulation is permitted under the 1995 ICC Termination Act. Once the law becomes clear, then courts should automatically award attorneys’ fees. But not now, certainly.

Second, and more important to the future of this country, the use by a corporation of 42 USC 1983 illustrates how far corporate power has come. When enacted, if my history is accurate, Congress intended the statute to protect black Americans against the predations of whites in the South.

Now, a statute intended to protect individuals instead is perverted to a stick for large corporations to use against small municipalities. One cannot strictly fault Guilford here, for the United States law has steadily supported the view that corporations are persons, entitled to all the rights of natural persons.

A sea change in the attitude of American citizens, that is, real flesh-and-blood American citizens, must arise to put the corporation back in the box it belongs: a creation of the state, subject to the right of the people to regulate it.

PEOPLE

David Ploof, vice-president of marketing for the Vermont Rail System, died at 52 of cancer on 9 October. Memorial gifts in his memory may be made to the American Cancer Society, New England Division, Inc., 11 Loomis Street, Montpelier VT 05602-3021.

In August, Marty Tristine, director of development and governmental affairs at Logistec Connecticut, left the company he had once served for five years as president. He’s looking for opportunities in the maritime sector.

Very recently, Bill Ciezinski, director of transportation for International Forest Products, left that position and was succeeded by Alissia Sergeant.

Two railroaders with connections to New England were appointed in October to the Railroad-Shipper Transportation Advisory Council of the Surface Transportation Board: Charlie Marshall, president and chief operating officer of the Genesee and Wyoming Inc., and Jim Howarth, vice-president for merchandise marketing of CSX Transportation.