

High Peaks Oil Trains: A Primer On The Issues

by Phil Brown, Editor
Adirondack Explorer

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Iowa Pacific's tracks crossing the lower Opalescent River — recently acquired by the state — just before reaching Tahawus. Photo by Seth Jones.

The Iowa-Pacific rail company took state officials and environmental activists by surprise in July when it unveiled a plan to store hundreds of drained oil-tanker cars on its tracks near Tahawus on the edge of the High Peaks Wilderness.

Ed Ellis, the president of Iowa Pacific, says revenue from storing the cars will help keep afloat its tourist train, the Saratoga & North Creek Railway, which has been losing money. Critics contend Iowa Pacific is creating a quasi-junkyard in the Adirondack Park.

Ellis and other officials at Iowa Pacific did not reply to numerous phone messages and emails from the *Adirondack Explorer*, but Ellis presented the plan to the Warren County Public Works Committee on July 28, saying the company hoped to begin moving cars to Tahawus within a few months, possibly in just a few weeks.

The company hopes to receive three hundred to five hundred cars, which would take up three to five miles of track. The cars would be kept near an abandoned mine at Tahawus as well as on rail sidings and possibly on the main

track. Ellis said the cars would be stored for at least a year.

The cars in question, known as DOT-111s, are prone to puncture and explosion in derailments when they're full. The federal government is requiring some forty-three thousand cars to be modified or scrapped by 2020. Owners are putting many DOT-111s in storage until they decide what to do with them.

Ellis said the cars stored on Iowa Pacific's tracks will contain only residual oil – perhaps a few gallons each. The risk of a leak contaminating the environment, he told the committee, "is virtually non-existent."

Environmentalists have expressed alarm at Iowa Pacific's plan, pointing out that the tracks run for long stretches beside the Hudson and Boreas rivers and end in a valley bordered by the High Peaks. What's more, much of the line passes through forever-wild Forest Preserve, including the 6,200-acre MacIntyre East parcel acquired by the state this year.

"People are astounded by this. This company has decided without any consultation with the state to turn one of the most scenic and protected areas of New York State into an oil-train junkyard," said Christopher Amato, chairman of the green group Adirondack Wild.

One question is whether the state – through the Department of Environmental Conservation (DEC) and Adirondack Park Agency (APA) – has authority to regulate the operation. Iowa Pacific did not inform either agency of its plan. As of press time, DEC and APA officials had said little about the matter other than that they were concerned and were researching the legal issues.

Adirondack Wild wrote Governor Andrew Cuomo arguing that Iowa Pacific needs permits from both agencies. The August 19 letter says that storing tank cars on private land within the corridor would constitute "a new junkyard" that would require an APA permit. It also asserts that the company needs a DEC permit to operate a solid-waste-management facility.

Furthermore, Adirondack Wild urged Cuomo not to allow any cars to be stored on the thirteen miles of tracks in the Forest Preserve. It contends that Iowa Pacific's use of the line amounts to "an illegal occupation of Forest Preserve lands." The argument is that the corridor was legally abandoned when Iowa Pacific acquired it in 2011.

"The proposed storage of old, potentially leaking DOT-111 oil tank cars in the High Peaks region would pose a significant threat to the natural resources of the Adirondack Park and be a glaring disfigurement of a scenic landscape," according to the letter, which was signed by Amato, who is a lawyer and former DEC assistant commissioner, and two staff partners of Adirondack Wild. Protect the Adirondacks also is researching the state's legal options. Peter Bauer, the group's executive director, echoed Adirondack Wild's claim that

storing cars on the tracks may constitute “a new commercial use” requiring APA approval. He added that DEC might claim jurisdiction as well, given its power to regulate hazardous waste and protected river corridors.

One complaint of environmentalists is that details of the proposal are vague. It’s unclear, for example, where exactly the cars would be stored and for how long.

“We’re opposed to the idea, based on what we know now,” said John Sheehan, spokesman for the Adirondack Council. He added: “Parking oil tankers along the Boreas and Hudson rivers would be bad for the environment and worse for tourism.”

Another question is the role of the federal government. Federal officials declined to speak on the record, but they pointed out that Iowa Pacific must adhere to national environmental and safety regulations. Enforcement could include unannounced inspections. The officials said they didn’t know of any problems associated with storing empty cars elsewhere in the country.

The thirty-mile rail line – known as the Sanford Lake Branch – runs north from just north of North Creek to its terminus at the Tahawus mine. It has a complicated history. During World War II, the federal government used eminent domain to obtain a right of way and build the line so titanium could be transported from the mine. In 1962, the federal government renewed the right of way for a hundred years. In 1989, the government sold the tracks and right of way to NL Industries, the mine owner, after which the line fell into disuse. NL sold the rails and right of way to Iowa Pacific in 2011. Thus, the railroad owns the tracks but not the land they sit on.

Charles Morrison, a retired DEC executive, does not believe the state has the authority to stop the project, but he said the state should monitor the operation to make sure oil does not leak out and is disposed of properly. “Storing empty cars is perfectly within the prerogatives of any railroad,” he said.

Morrison said the state and environmentalists should focus on the long-term future of the rail line. He’d like to see it become a multi-use trail. “Somehow we should be getting our Forest Preserve back, and the state has to figure out how to do that,” he said.

When Iowa Pacific bought the line, it said it planned to remove waste rock from the mine. It also applied for common-carrier status from the federal government. At the time, Morrison and others argued that the line had been abandoned and should revert to its original owners — that is, the state and private landowners. The Cuomo administration and both U.S. senators from New York went to bat for the railroad, and the federal government approved the common-carrier application, allowing Iowa Pacific to serve more

customers and transport more goods.

Iowa Pacific now contends that its common-carrier status will obligate it to transport the empty tankers across track owned by Warren County. Iowa Pacific leases this section of track (which connects to the Sanford Lake Branch) and uses it primarily for its tourist trains.

"We can't turn anybody down," Ellis told the Warren County committee. "So if somebody comes to me and says I want to store my tank cars and we make a deal for that storage, then the movement of those cars is common carriage."

Frederick Monroe, executive director of the Adirondack Park Local Government Review Board, said Warren County supervisors support Iowa Pacific's plan. "Warren County's position is that maintaining the rail is important; that the rail operator needs to make sufficient money to stay in business; that a tourist train operation does not provide sufficient revenue; and that storing virtually empty tanker cars is not a serious safety or environmental risk," Monroe said.

However, Tahawus and most of the Sanford Lake Branch lie in Essex County. Keene Supervisor Bill Ferebee said that county's Board of Supervisors, which he chairs, had not discussed the matter yet, but he questioned whether storing tanker cars is appropriate in the Adirondack Park.

"We're a storage area for trees. That's all we want to store," Ferebee said. "We don't want to store railcars."