# COLAB SAN LUIS OBISPO COUNTY

## WEEK OF JUNE 21-27, 2015

## NO BOARD OF SUPERVISORS MEETING ON TUESDAY JUNE 22, 2015

## APCD CONTINUES DUNES DUST LAWSUIT LOSS RESPONSE AGAIN

## &

### HILL AND MARX ATTACK A PUBLIC SPEAKER/THREATEN HIS JOB

## LAFCO "TENTATIVELY" SETS PASO BASIN DISTRICT BOUNDARY

## SUPPORT DIABLO BEFORE NUCLEAR REGULATORY COMMISSION

**(WEDNESDAY JUNE 24, 2015 AT EMBASSY SUITES 6 PM)**
**SEE PAGE 9 FOR DETAILS**

## SAVE THURSDAY JULY 30, 2015

**(FOR THE PLANNING COMMISSION FINAL HEARING ON THE MORATORIUM, AG OFFSET REQUIREMENTS, AND MORE)**

## AND MUCH MORE

## Board of Supervisors Meeting of Tuesday, June 16, 2015 (Completed)

**Item 37 - Final Budget Adoption.** The Board adopted the Budget almost as submitted. There were no reductions anywhere in the $650 million package. It added some contributions to cultural, economic development, and social services not-for-profit organizations.

**Item 39 - Hearing to consider an appeal by the Sierra Club of the Planning Commission's approval of Conditional Use Permit DRC2014-00015 (California Flats Solar Project) to construct, operate, and maintain a 3.3 mile access road and temporary construction staging areas near the Highway 41/46 split, to serve an approved 280-megawatt (MW) solar power facility located in unincorporated southeastern Monterey County, and consider the Final Environmental Impact Report.** The Board denied the appeal and approved the project 5/0. It turned out that the Sierra Club (the appellant) believes that the project, which is actually in Monterey County, will harm the California Condor and the Red Winged Black Bird (endangered species). COLAB reminded the Board that the issue for SLO County is approval of 3.5 miles of a 7-mile access road which starts in SLO County and ends up in Monterey County.

**Background:** The Sierra Club appealed the County's approval of an access road to a solar farm. The Solar project is actually in Monterey County and has been approved by Monterey County. The road connects the project with the highway in San Luis Obispo County. The Sierra Club asserts that the road will be growth inducing (by adding construction jobs) and that the road, which will be unfenced, will interfere with wildlife movement.

**Item 42 - Avila Beach Terrace Appeal.** The Board denied the appeal and approved the project 5/0. The Board found that the project had been properly reviewed and had adequate water supply.

**Background:** An individual, Michael Kidd, appealed the Planning Commission's approval of the Beach Terrace project. The grounds of the appeal include lack of water because of the drought, additional traffic (with a demand for an updated traffic study), and a demand that the Avila Community Plan be updated prior to approval of the project. The project is a fairly sophisticated campground on the hill above the Port San Luis Harbor.

## No Board of Supervisors Meeting on Tuesday, June 22, 2015 (Not Scheduled)

There will be no meeting, as the Board will be on a 2-week summer recess.

## Air Pollution Control District (APCD) Meeting of Wednesday, June 17, 2015 (Completed)

**Item C-3: Continue Hearing on Rule 1001 (Dunes Dust Rule) and Discuss Additional Options Recommendation: Consideration and Board Direction.** After considerable debate the APCD Board again postponed any final decision on what to do about the decision of the

State Court of Appeals invalidating its ability to require a permit enforcing its dunes dust regulatory order (Rule 1001). This leaves them with a consent agreement wherein the State Parks Department, which operates the Dunes Park, and the APCD agree to certain deadlines to install various dust reducing features, such as snow fence, hay bales, and vegetation. APCD staff is arguing that they should simply rely on the consent agreement and proceed as if nothing happened. Some APCD members, including Debbie Arnold, Ed Waage, and Barbara Harmon, have said wait a minute, the Court decision has changed things. We should get rid of Rule 1001 and enter into a completely voluntary agreement and cooperative process to work on ways to reduce the dust. This course is anathema to Adam Hill, Bruce Gibson, and SLO City Mayor Marx.

The Air Pollution Control Officer (APCO) presented 4 choices for the Board to consider

*1. Rescind Rule 1001 and enter into a Memorandum of Agreement* (The Waage proposal).

*2. Repeal Rule 1001 and enforce District Rule 402, Nuisance.*

*3. Rescind Rule 1001 and Recommend the County use its authority as a property owner and/or the authority of the Public Health Officer to abate the public health risks and nuisance caused by emissions from the ODSVRA.* (The Health Officer showed up and said she had power over communicable diseases but that cancer, asthma, and other respiratory problems alleged to be caused by $PM_{10}$ dust (airborne crystalline silica) are not forms of communicable disease. If she found that there were significant direct causal relationships, she could declare a temporary emergency for up to 7 days, but it would have to be ratified by the Board of Supervisors. Significantly, she pointed out that while the $PM_{10}$ creates a hazard (risk) for the referenced respiratory problems, there does not seem to be any way to actually verify that a particular individual's illness or death was caused by exposure to $PM_{10}$. She did not indicate if the Health Department had detected or verified any clusters of non-communicable respiratory illness in the area downwind from the State Park riding area.

a. Some advocates for closing the dunes keep insisting that they or their neighbors are getting cancer from exposure to the dust. Apparently there is no statistical County Health Department data (let alone verified diagnosis) on this score.

b. Gibson and Hill are unlikely to relish a straight up vote at the Board of Supervisors declaring a health emergency without overwhelming medical evidence. The lawsuit potential and dueling experts could result in years of expensive litigation and, were the County to lose, huge damages.

*4. Continued Implementation of Rule 1001 and the Consent Decree Agreement* (the APCD staff recommendation).

The EPA Issue: Readers should remember that the APCD Board agreed to send a letter to the EPA to see what its opinion of choice 1 above would be. "Conveniently" the APCO's letter to

the EPA was not included in the package, and therefore the public and perhaps some Board members have no idea what it said. It would make a difference how the question is asked. As predicted, the EPA's answer letter dated June 15, 2015 was not included in an update to the Board agenda. Staff says it was added to the APCD's website but was deeply buried. Copies were not generally available for the public at the meeting and when we asked, staff ignored us and would not make copies. There were no copies of the outgoing request to EPA and we have not been provided with one to date.

The gist of the EPA response is to support the maintenance of Rule 1001 and states in part:

*If an alternate mechanism is explored, it must be enforceable by the District and contain measures at least as stringent and as timely as those in Rule 1001 to protect public health.*

The implication is that if an alternate mechanism fails in this regard, the EPA could declare the County in Federal non-attainment for $PM_{10}$ and move in and impose its own regulations, deadlines, and enforcement mechanisms. A related threat is that EPA would declare all sources of dust as being in non-attainment and go after agriculture, construction, and other activities as well as the dunes riding. Hill was quick to amplify this threat as a reason to submit.

The problem for the APCD is that the Appeals Court declared the key enforcement tool (a permit with conditions and failure penalties) to be illegal.

The Appeals Court has remitted (sent back) its decision to the County Superior Court for implementation. The APCD's lawyer thinks that he will be able to get the Court to modify the decision in some way. This will probably result in further litigation, which is what Ed Waage is trying to avoid.

**More Intimidation:** At the end of the hearing, a speaker named Will Harris came to the lectern for public comment on the item. He stated that he was employed by the California Geologic Survey, which is a Division of the State Department of Conservation. It appears the Division is responsible for preventing damage from earthquakes and other geologic forces.

Harris made a presentation in which he stated that the APCD has never determined background levels (that is the naturally occurring amounts) of dunes dust. This is important because the impact of the off-road vehicles could not be determined without this information. Harris asserted that the background levels are currently far lower than in past times, because the State has propagated so much vegetation over the decades that the amount of dust overall is much lower.

As Harris finished Hill accused Harris of representing "someone." Hill said in an accusatory voice, "Who told you to come today?" Harris replied that no one told him to come.

Hill: "So you are representing yourself?"

Harris: "I came because of my professional experience."

Gibson (muttering in the background/mic was OFF): "Attending for whom, the state?"

The APCD Board then went through a discussion of the continuation of the DUST RULE matter. Arnold tried to get them to consider alternative 1 (the Waage version). In the end, all voted for continuation except Arnold and Harmon.

As the meeting was about to adjourn SLO Mayor Marx returned to the Harris issue and expanded on it:

Marx - something to the effect: Mr. Harris's performance as a paid advocate did not disclose that he was representing someone else. I found this very disturbing.

She then asserted that members were meeting with outsiders such as Kevin Rice, who has sued the APCD and on occasion has discussed closed session items. She did not name which members or member. She said: We need to know if there are ex parte conversations.

She stated that paid consultants must identify themselves as such.

Harris attempted to come to the lectern on a point of order, since he had been personally called out and publicly humiliated and impugned by a sitting Mayor and County Supervisor. Hill forcefully called him out of order and would not let him speak. As the meeting ended Hill glared at Harris and said menacingly, wait until we talk to your superiors in Sacramento. Other members of the APCD did not challenge Hill's behavior, thereby countenancing intimidation, threats, and a clear Brown Act violation.

THE NEXT REGULAR APCD MEETING IS SEPTEMBER 23, 2015

**Local Agency Formation Commission (LAFCO) Meeting of Thursday, June 18, 2015 (Scheduled)**

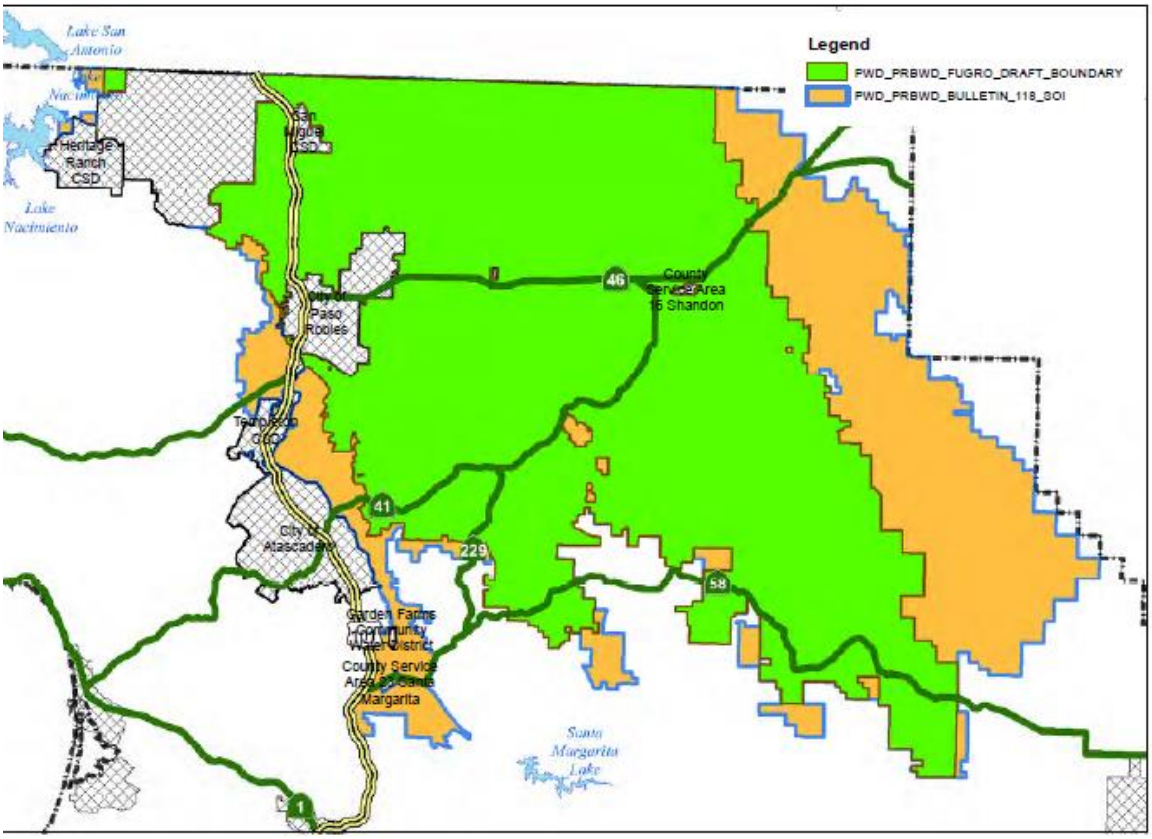
**A-1: Study Session: Paso Robles Basin Water District - Mr. Erik Eckdahl, State Water Resources Control Board - Mr. Gerhardt Hubner, Fox Canyon Groundwater Management Agency - Fugro/Bulletin 118 Boundary Discussion, Schedule and Venue Status (Recommend Receive and File - Provide Guidance Regarding the Fugro Boundary).** The LAFCO heard an extensive presentation from Erik Eckdahl, who is the executive in charge of implementing the Sustainable Groundwater Management Act (SGMA) statewide on behalf of the State Water Resources Control Board (SWRCB). Eckdahl made it clear that the last thing the State wants to do is take over water basins and administer the program locally. Thus failure of locals to set up a sustainable resource agency (SRA) or use an existing agency and develop a groundwater sustainability plan (GSA) will not result in immediate takeover. Instead there will be a phased process consisting of coaxing and technical assistance. Takeover would be a last resort if the State were simply ignored. The SWRCB and State Water Department are working on detailed regulations that will contain the standards by which the State will determine if local governments in a particular basin have developed a management structure, basin boundary map, and ultimately a GSA that can be approved. Some of this work may take well into 2017, even though the Act requires that localities determine their SRA by January 2017. Eckdahl is a smooth, articulate executive.

We asked Eckdahl in the hall afterwards about adjudication, and he indicated that he was learning about it. He said it was different in each case in terms of how it works. When asked about the superior water rights of adjudicated overliers verses municipal appropriators with secondary prescriptive rights, he stated that they all had to be treated equally (for example on pumping restrictions). He even suggested that municipal pumpers had preference over agriculture. This troubling statement (which is not true in the case of the Santa Maria Basin adjudication) is indicative of where the State is heading on the groundwater issue. Agriculture will be sacrificed to benefit the cities. In other words Paso Robles can allow as many new hotels as it can attract, while rural neighbors will be subjected to water reductions, a permanent moratorium, and forced credit purchases for any new development or expansion. Under the current scheme, Paso will function as its own SMA with its own plan, even though it is a substantial basin pumper.

Gerhardt Hubner from the Fox Canyon Groundwater Management Agency gave an extensive presentation on the history and role of his agency. He functions as the Deputy Director and is actually an executive in the Ventura Water/Flood Control Department who is assigned to function part time as a Fox Canyon official. Fox Canyon's enabling legislation was used as a model for AB 2453, which is the legislation authorizing the creation of a Paso Basin Water Management Authority (PBWMA). Fox Canyon is the primary basin management entity (over 7 sub basins) in Ventura County and serves a population of about 700,000. Its budget is $750,000 per year and it has been in operation for decades. This is striking in that the proposed budget for the incipient PBWMA budget is set for $950,000 per year for each of its first 5 years, and its only product will be a groundwater sustainability plan. The Fox Canyon District Board is not

elected but is made up of representatives appointed by the various jurisdictions and one agricultural rep. It has not been able to agree on how to bring the basin into balance (it pumps out 150,000 acre feet more per year than flows in). Unlike the proposed Paso District, big municipal pumpers in Ventura, such as Thousand Oaks, are part of the district and will be subject to its ultimate SGMA restrictions.

**District Boundaries:**




The LAFCO Executive Director recommended that the area in green ultimately be adopted as the district boundary. The larger area, which combines the green and orange, is the boundary of the Paso Basin as defined by the State of California Department of Water Resources (DWR) for compliance with the recently adopted Sustainable Groundwater Management Act (SGMA). The green area boundary is called the Fugro version, after the name of the engineer who prepared it. The Green + tan area is called the State DWR Bulletin 118 boundary. The LAFCO Board conducted a considerable discussion and determined to "tentatively" select the Fugro version. It was clear they had been heavily lobbied in this regard. Paso Basin County Project Manager Diodati actually pulled a speaker slip and requested the LAFCO to approve the Fugro boundary. The County's so-called application uses the Bulletin 118 boundary. We recall no Board of Supervisors meeting where this change was publicly vetted or authorized. All this is indicative of the roughshod way this whole process is being conducted to a pre-determined conclusion.

**"Application" Review Update:** The LAFCO Executive Director confirmed what we have been pointing out for weeks. There is no valid County application before LAFCO. The County staff will be adding new elements to the application in secret and without public review or a definitive public hearing prior to authorizing them. We have asked the LAFCO Director to send us a copy of the letter in which he is preparing to ask for more information from the County. We already know that the County is doing further financial work on the proposed district.

The public and particularly the basin residents should demand a re-do of the application authorization process, demand that a complete application be presented, and demand that there be a new public hearing prior to the Board of Supervisors authorization of that application. LAFCO should of course insist that this be done prior to considering an application. Otherwise they will be complicit in the Board of Supervisors' ramrodding of the process to its predetermined conclusion. One problem, as we have repeatedly pointed out, is that two of the seven LAFCO Commissioners are Supervisors Mecham and Gibson, who are the chief proponents of the district. The ethical dilemma is rejected as irrelevant "because the law allows it." The public should be outraged.

**Background:**

*The application submitted to LAFCO by the County is currently being reviewed by LAFCO Staff. On June 2, 2015 the County approved a contract with NBS consulting and the signature of the LAFCO Indemnification and Cost Accounting Agreement. A letter requesting additional information needed for the application to be complete will be prepared and submitted to the County. The 30-day initial staff review period ends on June 25, 2015. One item on the additional information list will be the second phase financial study being prepared by the County using NBS Consulting. This second phase will provide information about the funding mechanism that would be used to fund the District. The two options being studied are a parcel tax or property related fee. This study is scheduled to be considered by the Board of Supervisors in August. The September 17th hearing would focus on the topic of funding for the District as well as other issues.*

**Note that the LAFCO Executive Officer says the County application is not complete.** It was always clear that LAFCO is not in possession of complete application from the County because there never was a complete application, and the Board of Supervisors (Hill, Mecham, and Gibson), in their zeal to ramrod the district through, never really conducted a proper and complete review before forwarding a request for approval to LAFCO. The Board actually had no idea (and could not have had an idea) about the financial impacts and feasibility of its proposed policy when it was adopted.

a. LAFCO should reject the application as incomplete and should require the Board of Supervisors to prepare and submit a complete application.

b. The rhetoric about "phases" is just cover for the incomplete and improperly adopted application.

**Schedule Train Wreck:** COLAB pointed out during public comment that the schedule presented a problem. The Board and staff simply ignored the comment. This means that the public will be confronted by two huge interrelated water policy/regulatory schemes playing out in parallel in separate venues.

**Background:** The LAFCO staff has updated its tentative processing schedule with a little more detail. One serious problem is that the key hearings in late August overlap the same time period as when the Board of Supervisors will be considering the so-called Water Conservation Program, which would make the moratorium permanent. Note that the schedule places key hearings in a period of the peak summer vacation season and the start of school. The key hearing on the County's proposed permanent moratorium could be on August 18, 2015. The public will be overwhelmed with meetings and material. Perhaps this is a calculated strategy to defuse and limit public participation and opposition. The current schedule is displayed below:

**Updated Schedule – June 18, 2015**

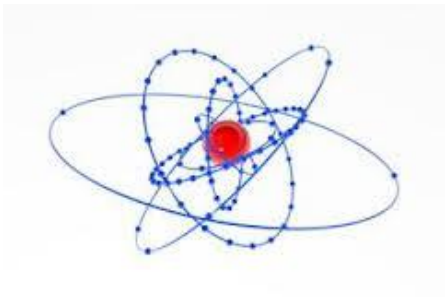
| Action | Target Date | Comment |
|---|---|---|
| Board Consideration of Resolution of Application | April 21, 2015 | Approved by the Board of Supervisors |
| LAFCO Staff Review-30 day Initial Review | May 26, 2015 to June 25, 2015 | Application is being reviewed |
| LAFCO Staff Analysis and Staff Report Preparation | On-going | Complete staff review and analysis of Boundary and Powers |
| Study Session: The Basin and the Resolution of Application | May 21, 2015 | Study Session-Completed |
| Study Session: DWR and Fox Canyon Groundwater Agency | June 18, 2015 | Study Session-Upcoming |
| Notice of Public Hearing: Pending Board approval of funding plan and other information | July - 2015 | 21-Day newspaper notice is required. Direct landowner-voter notice is not required, but will be completed at least 21 days in advance of the hearing |
| Staff Report - Documentation Release-Mid to Late July | July - 2015 | Staff Report and other documents |
| 1st Public Hearing – Paso Robles Event Center | August 20, 2015 | Public Hearing-5:30-10:00 p.m. Overview/Boundaries/Powers |
| 2nd Public Hearing - SLO | Sept. 17, 2015 | Public Hearing-Funding/Other Topics |
| Additional Hearings as Needed | | |

## Nuclear Regulatory Commission (NRC) Meeting in San Luis Obispo of Wednesday, June 24, 2015 6 PM, Embassy Suites Hotel (Scheduled)

The NRC will conduct a meeting to review the performance of the PG & E Diablo Canyon Nuclear Power Plant. There will be an opportunity during the 6-9 PM session for the public to

speak to the Commission representatives. It is expected that the usual anti-nuclear groups will show up to complain about the plant and advocate for its permanent shut down. It would be informative for the NRC representatives to hear from other segments of the community that support the plant and nuclear energy. It is requested that COLAB members, friends, and allies stop by and make a brief comment. Key issues include:

- The plant's longstanding safety record.
- Its location on a bluff high above the ocean and out of reach of tsunamis.
- Its employment and economic benefits to the community.
- Its substantial tax payments, which fund schools and vital public safety services (largest property taxpayer).
- It generates 2800 Mega Watts of electricity every day, rain or shine, and at night. This is about 10 % of all the electricity in California and 20% in PG & E's vast service area.
- It does not generate $CO_2$ or other greenhouse gases.



U.S.NRC
United States Nuclear Regulatory Commission
*Protecting People and the Environment*

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**NRC to Discuss Performance Assessment For Diablo Canyon Nuclear Power Plant**

The Nuclear Regulatory Commission staff will hold public meetings in San Luis Obispo, Calif., on June 24 to discuss the agency's performance assessment for the Diablo Canyon nuclear power plant. Diablo Canyon, located near San Luis Obispo, is operated by Pacific Gas & Electric Co.

An open house will be held from 2:00 to 5:00 p.m. followed by a meeting between NRC staff and PG&E officials from 6:00 to 9:00 p.m. at the Embassy Suites, 333 Madonna Road, San Luis Obispo. At the evening meeting, in addition to the performance assessment, the NRC staff will be available to answer questions from the public on Diablo Canyon-related topics. While the plant performed safely in 2014, it will receive an additional inspection beyond the extensive baseline inspections due to an emergency preparedness finding.

"In addition to discussing our annual assessment of plant performance with PG&E, the open house and extensive question and answer period following the meeting will provide local officials and the public ample opportunity to engage the NRC on our regulatory oversight activities at Diablo Canyon," said Region IV Administrator Marc Dapas.

The NRC uses color-coded inspection findings and performance indicators to assess nuclear plant performance. The colors start with green and then increase to white, yellow, or red, commensurate with the safety significance of the issues involved. Performance indicators are statistical measurements of plant and equipment performance. The NRC's action matrix reflects overall plant performance and agency response. There are five columns in the matrix with Column 1 requiring a baseline level of inspections.

Diablo Canyon is in Column 2 because of an emergency preparedness- related white finding and will receive a follow-up inspection in addition to the baseline inspections. Inspections are performed by two NRC Resident Inspectors assigned to the plant and inspection specialists from the Region IV office in Arlington, Texas.

A letter sent from the NRC Region IV office to plant officials addresses the performance of the plant during 2014. It is available on the NRC website.

Note the tables on the next two pages below, which summarize deaths and injuries at rail crossings from 1981-2014. There are thousands.

## All Highway-Rail Incidents at Public and Private Crossings, 1981-2014
## Source: Federal Railroad Administration

| Year | Collisions | Fatalities | Injuries |
|---|---|---|---|
| 1981 | 9,461 | 728 | 3,293 |
| 1982 | 7,932 | 607 | 2,637 |
| 1983 | 7,305 | 575 | 2,623 |
| 1984 | 7,456 | 649 | 2,910 |
| 1985 | 7,073 | 582 | 2,687 |
| 1986 | 6,513 | 616 | 2,458 |
| 1987 | 6,426 | 624 | 2,429 |
| 1988 | 6,617 | 689 | 2,589 |
| 1989 | 6,526 | 801 | 2,868 |
| 1990 | 5,715 | 698 | 2,407 |
| 1991 | 5,388 | 608 | 2,094 |
| 1992 | 4,910 | 579 | 1,975 |
| 1993 | 4,892 | 626 | 1,837 |
| 1994 | 4,979 | 615 | 1,961 |
| 1995 | 4,633 | 579 | 1,894 |
| 1996 | 4,257 | 488 | 1,610 |
| 1997 | 3,865 | 461 | 1,540 |
| 1998 | 3,508 | 431 | 1,303 |
| 1999 | 3,489 | 402 | 1,396 |
| 2000 | 3,502 | 425 | 1,219 |

| | | | |
|---|---|---|---|
| 2001 | 3,237 | 421 | 1,157 |
| 2002 | 3,077 | 357 | 999 |
| 2003 | 2,977 | 334 | 1,035 |
| 2004 | 3,077 | 372 | 1,092 |
| 2005 | 3,057 | 359 | 1,051 |
| 2006 | 2,936 | 369 | 1,070 |
| 2007 | 2,776 | 339 | 1,062 |
| 2008 | 2,429 | 290 | 992 |
| 2009 | 1,934 | 249 | 743 |
| 2010 | 2,051 | 260 | 887 |
| 2011 | 2,061 | 250 | 1,045 |
| 2012 | 1,985 | 230 | 975 |
| 2013* | 2,096 | 231 | 972 |
| 2014* | 2,280 | 267 | 832 |

We reviewed the history of deaths and injuries at American nuclear facilities from 1955-2013. The data showed 9 deaths, all workers at the various plants. There were no deaths of people living in the area. Most of the 9 deaths were not related to radioactivity, but were industrial accidents involving electrocution or machinery.

Why don't we ban railroads?