



## PLANNING COMMISSION APPEARANCE REQUEST FORM

The San Luis Obispo County Planning Commission Welcomes  
Your Comments for the Phillips 66 Rail Spur Hearing

In the interest of time, three (3) minutes will be reserved for your presentation. Please submit this completed form to the Clerk of the Planning Commission when it is your turn to speak. YOU MUST HAVE THIS FORM WITH YOUR NUMBER TO SPEAK, speaker numbers will be called in numerical order. Please keep apprised of the speakers/numbers as your number will be called. If you miss your opportunity to speak, you must request a new number. Please note that you will be granted one 3 minute opportunity to speak per person (we are digitally recording speakers).

Public Comment remarks should be directed to the Chairman and the Commission as a whole and not to any individual thereof. No person will be permitted to make slanderous, profane or personal remarks against any individual

PLANNING COMMISSION  
AGENDA ITEM: 3

DATE: 2/5/16

NAME (print):

Lori Loshbaugh

DO NOT REMOVE FROM FILE

SIGNATURE:

[Handwritten Signature]

DATE:

2-5-16

### IMPORTANT INFORMATION:

- If your number is not within approximately 20 of the current speaker we ask that you wait outside of the Chambers in one of our overflow areas where the hearing will be streaming for you to view. Staff will be available in overflow areas to help with any logistical questions. The hearing room can only hold 160 people for safety.
- If you wish to submit digital information such as a PowerPoint or digital photos within your 3 minute presentation, please put a sticker with your speaker number on a flash drive and submit to the clerk when it is your turn to speak. Stickers will be available in the lobby with our staff. The flash drive will not be returned as the information will need to be retained for the record.
- Overflow viewing areas are located in the Fremont Theater which is next door to the hearing chambers, Conference Room 161/162 outside the hearing Chambers as well as the lobby area. The hearing will be streaming for viewing at these locations. The hearing can also be viewed online at <http://www.slocounty.ca.gov/planning/meetings.htm>
- If you need assistance with a language translator (Spanish) please notify one of our staff with your speaker number handy.

# Speaker Number 413

Good Morning Thank You for reading this My name is Lori Loshbaugh  
I am a Ca Native and have lived on the central Coast  
for 26yrs.

I have raised and supported my family by working at  
the Phillips 66 Santa Maria Refinery for over 20yrs.  
and continue to support and care for my disabled husband  
I along with close to 200 other employees at the refinery  
want and need our good paying jobs. We all support  
local business, charities, sports etc. I have heard many  
people say "jobs are not going away" or "they can  
just find another job" I take offense to that  
We have already lost people and positions and if  
we cannot get enough crude to run who knows  
what will happen. Good jobs are hard to come  
by on the central coast. We have all discussed  
this and the majority of us would be leaving the  
area or state. I have already lost several  
neighbors who have been transferred or laid off  
in the oil production/pipeline industry.

As for "No Oil Trains" I shouldn't have to remind  
everybody that Oil trains already go through SLO  
County several times a week to reach their  
destinations. They also travel through all the  
cities that spoke here. Also tank car hauling  
LPG, Chlorine gas, hydrochloric acid etc along  
with several other hazardous/toxic chemicals  
routinely pass through mixed with freight cars  
without any fanfare from all the  
fear mongers

## Just for thoughts

- The residents of Trilogy complain about train noise yet they bought close to train tracks
- The newer residents of the Nipomo Mesa complain about a refinery close by - maybe they should have investigated area first
- The Monarch Dunes residents say it will harm the Butterflies - So did tearing down close to 160 acres to build homes and a golf course
- Arguments about air pollution - every time a housing track, hotel or shopping center is approved you have air quality issues that cannot be mitigated  
You also have environmental issues that cannot be mitigated



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AGENDA ITEM: \_\_\_\_\_  
DATE: 2/5/16

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NAME (print): DAVID WELLS

SIGNATURE: [Signature] DATE: 2/5/16

### IMPORTANT INFORMATION:

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# Speaker Number 415

First of all thank you for your time!

My ~~B~~ NAME is DAVID WELLS AND I LIVE ON THE NIPOMO MESA. I AM AN OPERATIONS SHIFT SUPERVISOR AT PHILLIPS 66 SANTA MARIA FACILITY, I AM THE SUPERVISOR OF APPROXIMATELY 12 TO 14 OPERATORS ON MY SHIFT AND OUR #1 PRIORITY IS SAFETY! WE PRIDE OURSELVES ON THIS EVERY DAY WE WORK HERE, WE'RE VERY PROUD OF OUR SAFETY AWARDS THAT WE HAVE RECEIVED BECAUSE WE EARNED THEM.

I HAVE BEEN AT THE REFINERY FOR THE PAST 16 YRS AND HAVE NEVER WORKED ANYWHERE BEFORE THAT PRIDES THEMSELVES ON SAFETY AS THIS REFINERY DOES.

I VOLUNTEER IN THE COMMUNITY ALL THE TIME, I HAVE A WIFE A 2 KIDS ONE THAT GOES TO DORTHERA AND ONE THAT GOES TO NIPOMO HIGH. MY WIFE AND I DO ALOT OF VOLUNTEER WORK AT BOTH THESE <sup>SCHOOLS</sup> AS OUR KIDS FUTURE IS OUR NUMBER 1 PRIORITY YOU NEED TO PASS THIS PROPOSAL. FOR THE FUTURE OF NOT ONLY MY JOB BUT FOR THE 200+ JOBS THAT WILL BE AFFECTED

WE OUR GOOD PEOPLE GOOD NEIGHBORS. THERE IS NO REASON TO DENIE THIS PROJECT. PHILLIPS 66 WILL TRANSPORT AND OFFLOAD CRUDE TRAINS SAFELY AND MY FELLOW WORKERS ARE COMMITTED TO THAT EVERY DAY.

CRUDE BY TRAIN IS ~~IS~~ SAFE AND WE WILL PROVE IT ~~TO BE~~ GOOD FOR THE FUTURE OF NIPOMO. THE PLACE MY FAMILY LIVES. THANK YOU

## Kay Gore's San Luis Obispo Planning Commission Comments

The facts are very simple: If you review Phillips 66's 2012 Annual Report or any of the information that they shared with prospective investors, the company stated that it was adopting a new strategy to refine advantaged crude, cheaper crude, such as Bakken crude and Alberta Tar Sands Crude, and doing so would realize \$450 million (almost half a billion) dollars in net income per year.

While Phillips 66 may attempt to placate fears related to carrying Bakken and Alberta crude by rail by saying that they will not transport such crude to their Santa Maria refinery if the spur is built, the fact is that railroads are common carriers and under federal law they have a duty to carry all commodities, even if they are dangerous. This is a critical point: Once the spur is built, San Luis Obispo has no control over what Phillips 66 ships on these heavy, mile-long, toxin-spewing trains, as federal law preempts local, county, and state law.

These trains are dangerous even if they do not explode and since the price of oil has been so depressed, there is no economic advantage at this time to Phillips 66 refining the Bakken or Alberta crude. But oil prices will rise again and with the rise oil trains will explode again. Setting aside all the health and environmental hazards enumerated in the Revised EIR, if an oil train explodes, not even California law SB 861, which the rail companies fought and fought hard, that requires demonstration of financial solvency to ensure that the railroads -- and not the impacted communities -- pay for damages in the event of an accident--not even SB 861 will be adequate to protect us.

In fact, if there is a major catastrophe, SB 861 only adds insult to injury. We the tax payers and residents of San Luis Obispo County bear the burden not only of potential loss of life, health, environment, and property, but the loss of our reputation—how can any company adequately provide recompense for these? And any damages that the rail company is ordered to pay, the company merely writes off its taxes as a cost of doing business, so again, we, the taxpayers, bear the burden as our tax liability must compensate for the rail company's reduced taxes.

There is no upside for San Luis Obispo County in the spur's being built. Phillips 66 makes almost a half a billion dollars a year in net income and people and their environment all along the tracks suffer the risks. I urge the San Luis Obispo Planning Commission to reject the spur.

Kay Gore  
Arroyo Grande, CA 93420

PLANNING COMMISSION

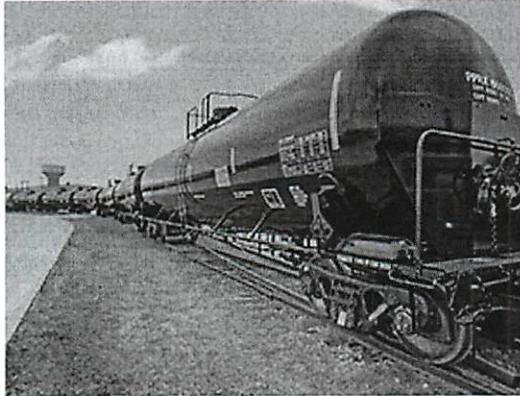
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DATE: 2/5/16 <sup>3</sup>

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## Phillips 66 Delivers on Advantaged Crude Strategy

Phillips 66 is steadily making a number of commitments to transportation infrastructure to deliver advantaged, or lower cost, crude oil to its U.S. refineries, resulting in significant cost savings and increased profitability for the company.

The company's biggest operating cost by far is the purchase of approximately 2 million barrels of crude oil per day (BPD), or 730 million barrels per year -- enough oil to fill Reliant Stadium in Houston 29 times. With crude oil prices fluctuating between \$90 and \$120 per barrel, that equates to more than \$80 billion a year for crude oil purchases.



"Crude oil and energy consumption account for approximately 70 percent of our refining business' cost structure," said Chairman and Chief Executive Officer Greg Garland. "The single biggest lever we have to

improve value in our refining business is through lowering our feedstock costs. A savings of \$1 per barrel across our refining system is worth about \$450 million of net income to us."

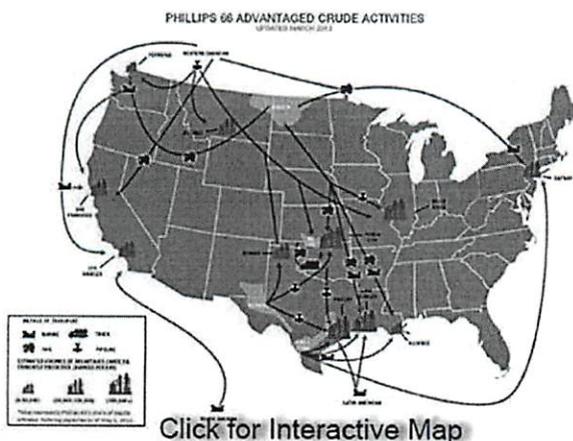
***"The single biggest lever we have to improve value in our refining business is through lowering our feedstock costs. A savings of \$1 per barrel across our refining system is worth about \$450 million of net income to us."***

Advantaged crude oil sells at a discount relative to crude oils tied to the global benchmark, North Sea Brent crude. For Phillips 66, advantaged crude oil includes heavy crude oil from Canada and Latin America, lighter Canadian grades, and West Texas Intermediate (WTI). Increasingly, it also includes shale crude oil from places like the Bakken in North Dakota and the Eagle Ford in Texas. The price for U.S. shale crude is typically tied to the WTI domestic benchmark which has recently been trading \$20 less per barrel than Brent crude.

"Running more advantaged crude oil in our refineries allows us to run less of the more expensive globally priced crude oils," said Garland. "This is a key element of the company's strategy for enhancing returns on capital and we think we can drive 2 to 3 percent improvement on our return on capital employed for our Refining business by incorporating more advantaged crude oil into our supply."

In the fourth quarter of 2012, 67 percent, or about 1 million BPD, of Phillips 66's U.S. refining crude slate was considered advantaged crude oil -- most of it WTI and heavy crude from Canada and Latin America, along with about 135,000 BPD of shale oil. By 2017, the company expects to be processing 500,000 BPD of new or increasingly advantaged crude oils.

The challenge for refiners like Phillips 66 is getting the advantaged crude oil to the refineries that are equipped to process it. While vast resources of advantaged crude oil are being produced in Canada and in the United States, there is not enough pipeline capacity in the right locations to carry the oil to where it's needed.



A number of pipeline projects that are planned or already under way could significantly increase the volumes of advantaged crude oil available to refineries in the Midcontinent and Gulf Coast regions, such as the proposed Keystone XL pipeline, the Seaway pipeline reversal and expansion, the Ho-Ho pipeline reversal and others. In the meantime, Phillips 66 is seeking alternative means to transport advantaged crude oil to its refineries.

"We are looking at pipe, rail, truck, barge and ship -- just about any way we can get advantaged crude to the front end of the refineries," said Garland.

Phillips 66 has established a cross-functional team from its Business Development, Commercial, Refining and

Transportation businesses to develop strategies for accessing and moving advantaged crude oil into its refineries. This

team has moved quickly to complete a number of logistics and supply agreements with third parties over the past 12 months as well as identified opportunities to grow existing wholly owned transportation assets that supply the refineries.

***"Until new pipeline projects come online, rail is in many cases the easiest and most cost efficient way to get advantaged crude to some of our refineries"***

"Until new pipeline projects come online, rail is in many cases the easiest and most cost efficient way to get advantaged crude to some of our refineries," said Jay Clements, manager, Business Development, and leader of the advantaged crude strategy team. "New rail projects can be built much faster than pipelines, allowing quicker access to the new and growing shale plays. However, our refineries are not currently set up to take delivery of large volumes of crude oil from trains, so we're looking at building rail offloading facilities at several refineries including the Bayway Refinery in Linden, N.J., and the Ferndale, Wash., refinery."

Phillips 66 has secured access to a third-party rail loading facility in North Dakota and the company has received the first batch of railcars from the 2,000 ordered in 2012. These railcars initially will be used to deliver Bakken crude oil west to the Ferndale Refinery and east to the Bayway Refinery.

The company is already processing 75,000 BPD of Bakken crude oil at Bayway and is processing smaller volumes of Bakken crude at Ferndale, with plans to significantly grow those volumes as the new rail car fleet is delivered. The oil is being delivered through third-party rail facilities and then by barge to the refineries. A proposed new rail offloading facility planned for Bayway would enable the delivery of 70,000 barrels per day of Bakken crude directly into the refinery. Smaller volumes of Bakken crude also are being delivered to the company's Midcontinent refineries via existing pipeline systems and to its Gulf Coast refineries through a combination of rail, pipelines and barges.

***"Our U.S. refining network occupies the broadest geographic footprint within our peer group which we think gives us a competitive advantage. It's a great platform for capturing advantaged feedstock"***

The Ponca City Refinery in Oklahoma is situated on top of the Mississippian Lime formation and the company has signed an agreement with a third-party pipeline operator to supply the refinery with approximately 20,000 BPD of crude oil from this local source. In addition, the company is enhancing its own transportation facilities that will enable delivery of another 40,000 BPD of Mississippian Lime crude oil to Ponca City by mid-2014.

The Sweeny Refinery in Texas is in close proximity to the Eagle Ford shale and another recent pipeline agreement will supply up to 30,000 BPD of Eagle Ford crude oil to that refinery beginning in 2014. Eagle Ford crude oil also is being delivered to Phillips 66's Gulf Coast refineries and to the Bayway Refinery via barges and tankers. The company recently signed time charter agreements for two medium-range U.S.-flagged tankers that supply Eagle Ford crude oil to the Bayway Refinery, the Alliance Refinery in Louisiana and potentially the company's other Gulf Coast refineries.



While many of Phillips 66's U.S. refineries are already processing some advantaged crudes, the company is making small modifications to several refineries, including the Lake Charles Refinery in Louisiana and the Ponca City, Sweeny, Alliance and Wood River refineries that will enable those facilities to process even more advantaged crude oil. The next challenge for the company is identifying strategies to get more advantaged crude oil to its California refineries.

"The California refineries are capable of running a wide range of crude oils which creates opportunities throughout North America to supply California if we can find a

cost effective mode of transportation," says Clements.

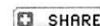
Garland believes the geographic diversity of the company's U.S. refining network, especially the company's significant presence in the Midcontinent and Gulf Coast regions, is a major strength and positions the company to be able to benefit from advantaged crude sources for years to come.

"Our U.S. refining network occupies the broadest geographic footprint within our peer group which we think gives us a competitive advantage. It's a great platform for capturing advantaged feedstock," said Garland. "Over the next several years, we are expecting 2 to 3 million barrels a day of light, sweet crude coming out of new U.S. shale plays and ultimately there will be 2 to 3 million barrels a day of Canadian heavy crude oil that comes south. We're going to make investments in infrastructure and aggressively pursue every angle we can to ensure we can bring as much advantaged crude as possible to our refineries."

## Railroad Transportation of Nuclear Waste and Other Hazardous Materials

The Electricity Journal, Vol. 21 Issue 3 pp.55

April 2008



By Michael McBride

Railroads continue to have duties to shippers and the public, and they may not take the law into their own hands. Except for emergencies – and then only for the duration of the emergency – they must carry all commodities without regard to whether they are dangerous, unless the proper agency of the federal government has relieved them of that obligation.

### I. Introduction

Railroads are common carriers. As common carriers, railroads have a duty to carry all commodities, even if they are dangerous, unless the federal government has relieved them of the duty to carry a particular commodity.

The government has relieved railroads of their duty to carry only a few commodities. To invoke the obligation on the part of the railroads to carry as common carriers, shippers must tender commodities for transportation by railroad in conformance with all applicable governmental regulations. If they do, courts have consistently held that railroads may not absolutely refuse to carry them. Railroads may, however, establish reasonable terms for the carriage of a commodity, subject to the review of the Surface Transportation Board.

The U.S. Department of Transportation has authority to establish regulations for the safe transportation of goods by railroad. Other agencies may also have authority in certain instances (such as the U.S. Nuclear Regulatory Commission in the case of radioactive materials). If a railroad or a shipper does not agree with those regulations and thinks that they should be changed or that new regulations should be adopted, it (or any other member of the public, for that matter) may file a petition for rulemaking with the applicable agency. In doing so, the petitioner may propose a particular rule or simply call an alleged problem to the agency's attention and ask it to propose and adopt rules to address the problem.

Many dangerous but important commodities are produced and used in this country every day. Chlorine, for example, is used to purify drinking water and perform other useful tasks, but it is highly toxic. Anhydrous ammonia is used for pollution control purposes in coal-fired power plants. Radioactive materials are produced and transported by railroad by the Department of Defense for use in submarines and in other national defense circumstances. Radioactive materials are also produced and used by private industry for medical and energy needs, among others. Fertilizer and fuel oil can be combined to make a powerful bomb, as happened at Oklahoma City in 1995, but they continue to be produced and transported in large quantities for use on farms and in other industries. Many of these and other dangerous, or potentially dangerous, commodities move by railroad.

It is in the public interest that railroads be obliged to carry these dangerous but essential substances because the rail mode generally has been found to be the safest mode for that transportation.

Railroads are no longer required to maintain tariffs, let alone to file them with any governmental agency as most regulated entities are required to do. Railroads are required, however, to maintain rates and other service terms and to provide them promptly to shippers who request them. Generally speaking, rates and other service terms for the carriage of any commodity are subject to regulation by the Surface Transportation Board, but they are not generally regulated in fact unless the railroads have "market dominance" and the rates exceed a reasonable maximum. Increases in rates or other service terms may not be imposed until 20 days have elapsed if a shipper has requested such rates or service terms, or if the shipper has made an arrangement for transportation that would be subject to those rates or service terms.

Since the Staggers Rail Act of 1980, Congress has allowed railroads also to act as contract carriers. As contract carriers, railroads are subject only to the obligations and liabilities set forth in the contract. Contracts are not regulated, but instead are enforceable in state or federal court in accordance with the terms of the contract. Most dangerous commodities move in accordance with contracts in order to permit carriers and shippers to cooperate in the safe transportation of such commodities.

There are times, however, whether lawfully or not, when railroads refuse to carry certain commodities. In the



### Related Professionals

- Michael McBride

### Related Practice Areas

- Environment
- Transportation & Infrastructure
- Waste

past, for example, railroads refused to carry radioactive materials, but the Interstate Commerce Commission found that their refusal was unlawful and required them to publish rates for their transportation. The ICC also struck down an effort on the part of the railroads to impose wasteful and unnecessary "special train service" on shipments of radioactive materials. The courts upheld the ICC. These ICC and judicial determinations remain the law today.

In 2001, railroads embargoed certain toxic chemicals due to concerns about terrorism. It is unclear whether the DOT sanctioned that embargo. During emergencies such as wash outs due to weather, railroads have on occasion been allowed to impose an embargo, but only to the extent required by the emergency. Such circumstances may not justify the permanent refusal of railroads to carry commodities, even dangerous commodities, unless the government so permits. Very recently, the Association of American Railroads urged that the manufacture of "extremely dangerous chemicals" no longer occur where supposedly safer chemical substitutes are available.<sup>1</sup> AAR's statement appears to have been addressed specifically at chlorine, but AAR is wrong about the need for chlorine and that supposedly safer substitutes are available. Obviously, it is not within a railroad's authority to determine what is to be manufactured by its customers.

Before such embargoes are considered or imposed again, it would be well if the railroads' customers were consulted and informed of the railroads' intentions, and if the proper agencies of the government were involved to determine if the overall impact of the railroads' actions was in the public interest. If, for example, such an embargo caused dangerous chemicals to be shipped by highway, the railroads' actions could create a safety problem rather than solve one.

## II. Railroads Are Common Carriers

It is indisputable that railroads are common carriers. 49 U.S.C. § 11101; *Akron, Canton & Youngstown RR Co. v. ICC*, 611 F.2d 1162, 1166 (6th Cir. 1979), cert. denied, 449 U.S. 830 (1980).<sup>2</sup> As such, they must carry virtually all commodities tendered to them upon reasonable request (*id.*, § 11101(a)),<sup>3</sup> and must maintain rates and other service terms for such transportation. *Id.*, § 11101(b). They may not increase rates or service terms in less than 20 days if (a) a shipper has requested such rates or service terms, or (b) if a shipper has made arrangements for transportation that would be subject to the increased rates or other service terms. *Id.*, § 11101(c).

Aside from its duty to carry all commodities tendered in accordance with governmental regulations, a carrier may impose other reasonable terms and conditions on the transportation of any commodity. What is "reasonable" may be challenged at the STB if no agency otherwise has jurisdiction. Generally, the STB has jurisdiction over all unreasonable "practices," 49 U.S.C. § 10704(a)(1), but it has jurisdiction over rates only if a railroad is "market dominant." Even if the railroad is found to be market dominant, the STB may prescribe a maximum reasonable rate only if rate exceeds the standard for reasonable rates established by the STB. 49 U.S.C. § 10707(c).<sup>4</sup>

A railroad may not be found to have violated its common carrier duty if it first fulfills its obligations entered into under lawful contracts pursuant to 49 U.S.C. § 10709. 49 U.S.C. § 11101(a). However, "[c]ommitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable." *Id.*

The "common carrier obligation," then, is a matter partly of statute, partly of the common law before enactment of the Interstate Commerce Act, and partly a matter of what the STB or the courts say it is. But there is no doubt that railroads are common carriers (as well as contract carriers and private carriers), that their status as common carriers imposes obligations on them to shippers and the public, and that they may not assert unilaterally a right not to carry certain commodities unless the law permits.

## III. Limitations on Embargoes

Railroads do impose embargoes on transportation over portions of their lines. See, e.g., *ICC v. The Baltimore and Annapolis RR. Co.*, 398 F. Supp. 454 (D.D.C. Md. 1975), *aff'd*, 537 F.2d 77 (4th Cir. 1976). Some such embargoes have not been the subject of litigation. For example, in the early 1980s there was a washout of a substantial coal-carrying rail line in Utah's Wasatch Mountains. The washout was so substantial that there was serious question whether, if the matter was litigated, the ICC would order reinstatement of the line or permit abandonment. As the court stated in *Baltimore and Annapolis*, "the determination as to whether an injunction should issue should be viewed as one of equity, i.e., 'whether it would be equitable to require substantial expenditures when shortly the commission may approve the railroad's abandonment application.'" 398 F. Supp. at 464, citing *ICC v. Chicago, Rock Island & Pac. RR*, 501 F.2d 908, 914 (8th Cir. 1974). Also, during the "500-year flood" of 1993 along portions of the Mississippi and the Missouri Rivers, certain railroads were required to reroute trains for weeks due to flooding of vast segments of their systems. Spring floods, and sometimes hurricanes, cause temporary embargoes on many rail lines.

It was the legendary 1972 storm Hurricane Agnes, in fact, which gave rise to the embargo in *Baltimore and Annapolis*, *supra*. The court held that "abandonment" is defined as "a permanent or indefinite cessation of rail service," citing *Meyers v. Jay Street Connecting RR*, 259 F.2d 532, 535 (2nd Cir. 1958); *ICC v. Chicago, Rock Island & Pac. RR*, 501 F.2d 908, 911 (8th Cir. 1974). The court also held that if the cessation of operations began and continues because of conditions over which the railroad had no control, no abandonment within the meaning of the Act would be established. *Baltimore and Annapolis*, 398 F. Supp. at 462 (citing cases). The court went on, however, to say that "[a]bandonment should be distinguished from the term 'embargo,' which is issued by the carrier alone and which will justify a cessation of service as a temporary emergency measure when for some reason the carrier is unable to perform its duty as a common carrier." *Id.*, citing *Chicago, Rock Island & Pac. RR v. ICC*, 505 F.2d 590, 593 (2nd Cir. 1974).<sup>5</sup>

The test, therefore, requires the carrier to be "unable to perform" its duty as a common carrier, not where the carrier may be unwilling to do so.

Because of the court's holding, quoted above, with regard to the equitable factors applicable to issuance of an injunction, the court in *Baltimore and Annapolis* held that neither the shipper nor the ICC "is entitled as of right

injunction, the court in Baltimore and Annapolis held that neither the shipper nor the ICC is entitled as of right to an injunction against B & A's unlawful abandonment." *Id.* However, after considering all the relevant factors, including the costs of repairing the line in question, the court held that the embargo was in fact an unlawful abandonment and issued an injunction requiring the railroad to restore service.

A railroad that adopts an embargo when it is not unable to perform its duty as a common carrier has violated the Act. *A fortiori*, if a railroad has adopted an unlawful embargo and does not need to expend capital to restore service, a court would be very likely to issue an injunction requiring the carrier to cease its embargo and perform its common-carrier obligations.

This is true even if the chemicals in question are dangerous. Certainly, the radioactive materials at issue in the Akron, Canton and Trainload Rates on Radioactive Materials cases were dangerous (although the container in which they were being transported is virtually impregnable and makes the transportation quite safe). DOT (and sometimes other agencies, such as the NRC) regulates such transportation so that it is safe. If railroads, which have been recognized as the safest mode for transportation of dangerous commodities, Akron, Canton, 611 F.2d at 1168, wish to impose new restrictions on such transportation in the rate and service schedules, they may be allowed to do so, subject to the authority of the STB over "unreasonable practices." 49 U.S.C. § 10704(a)(1). Moreover, they may seek to have DOT or other agencies with statutory authority over the particular transportation or commodities establish further restrictions by rule. Akron, Canton, 611 F.2d at 1168-70; *Conrail v. ICC*, 646 F.2d 642.

But the railroads may not determine that a commodity is absolutely too dangerous to carry, if the applicable governmental regulations for the transportation of that commodity are met. As the Sixth Circuit held in Akron, Canton (611 F.2d at 1169): "a carrier may not ask the [STB] to take cognizance of a claim that a commodity is absolutely too dangerous to transport, if there are DOT and NRC regulations governing such transport, and these regulations have been met. Such a claim is properly made before the agencies entrusted with promulgating these minimum safety obligations (footnote omitted)."<sup>7</sup>

#### IV. Conclusion

The lessons of the embargo cases are clear. An embargo must be temporary, and last only so long as a railroad is unable to perform its common-carrier duty over the line at issue. An embargo is unlawful if it either constitutes a *de facto* abandonment with authority of the STB or it constitutes an absolute refusal to carry a commodity for which there are applicable regulations governing its transport and those regulations have been met.

In other words, railroads continue to have duties to shippers and the public, and they may not take the law into their own hands. Instead, except for emergencies (and then only for the duration of the emergency), they must carry all commodities without regard to whether they are dangerous, unless the proper agency of the federal government has relieved them of that obligation. The government has relieved the railroads of the obligation to carry only a few commodities, for example money, gold, and silver (and perhaps circuses upon request of the circus), for reasons other than the hazards involved in transporting the commodities. Accordingly, the railroads must carry all commodities, regardless of how hazardous they are, unless Congress determines otherwise.

#### Endnotes:

1. See <http://www.aar.org/>.
2. The duties of a common carrier were, prior to the passage of the Interstate Commerce Act, established on a case-by-case basis. While the Act codified the common-law obligations of railroads as common carriers, *American Trucking Ass'n v. Atchison, Topeka & Santa Fe Ry.*, 387 U.S. 397 (1967), the Act also created purely statutory duties on railroads. Akron, Canton 611 F.2d at 1166. It is true that railroads may engage in "activities which lie outside the performance of their duties as common carriers and are not subject to the provisions of the Act." *Kansas City So. Ry. v. United States*, 282 U.S. 760, 764 (1931) (citations omitted). "But a common carrier dealing with transportation that is subject to the act cannot escape its statutory obligations by calling itself a private carrier as to the transportation." Akron, Canton, *supra*. As the Akron, Canton court put it so well: "in the almost 100 years since the passage of the act there has developed a new 'common' law of transportation under which the public duty of railroads has been broadened beyond that extant under the common law of carriers. It is not only 'common carriage' but transportation which is subject to the act and to the commission's statutory powers." 611 F.2d at 1168. It concluded by stating "[a] carrier's duties run not to shippers alone but to the public," citing *Brotherhood of Ry. Clerks v. Florida E. C. Ry.*, 384 U.S. 238 (1966), and that "[t]herefore, public needs must shape the boundaries of these duties." *Id.*
3. The Akron, Canton decision stated that "[t]here are exceptions to the general statutory common-carrier obligations of railroads," but recognized that they "are limited." *Id.* Among those commodities subject to the exception are money, "sterling and gold silverware," *Emporium v. New York Cent. R.R.*, 214 I.C.C. 153 (1936), and circus trains where the shipper has requested "limited and special services." *Transportation of Circuses and Show Outfits*, 229 I.C.C. 330 (1956).
4. For nearly all commodities, the standard is "stand-alone costs" (SAC). *Coal Rate Guidelines – Nationwide*, 1 I.C.C.2d 520 (1985), *aff'd sub nom. Conrail v. ICC*, 812 F.2d 1444 (3rd Cir. 1987). Under the SAC formula, the STB determines the replacement costs of a hypothetical, "stand-alone" competitor, which may include as much current traffic as the shipper chooses, and as much of a network as the shipper chooses. The SAC rate for the captive shipper is derived from the revenue needs of the hypothetical railroad after taking into account the revenues from the existing traffic and that railroad's overall costs. At times in the past, the SAC rate was below the "jurisdictional threshold" of 180 percent of variable costs, and so the SAC rate is prescribed at that threshold. However, for radioactive materials the ICC set a different standard, which was actually above the 180-percent threshold because the shippers were willing to pay it, and that standard was upheld over railroad objections. *Trainload Rates on Radioactive Materials, Nationwide*, *aff'd sub nom. Conrail v. United States*, 646 F.2d 642 (D.C. Cir.), cert. denied, 454 U.S. 1081 (1981). Also, the STB has the authority to set a rate standard different than SAC for small shipments, i.e., those for which the amount in dispute is disproportionate to the costs of litigating the matter. 49 U.S.C. § 10701(d)(3). The Board's "small-shipment" standards have

never been applied, but one shipper (DuPont) now has complaints pending against CSX.

5. The court then went on to hold: "Because both abandonment and embargo entail a cessation of service, the question of whether an embargo has been transmuted into an unlawful abandonment revolves largely around the length of the cessation and the intent of the railroad." *Id.*, citing the same cases and *Williams v. Atlantic Coast Line RR.*, 17 F.2d 17, 22 (4th Cir. 1927).

6. Of course, by definition a carrier would be "unable" to perform its common-carrier duty if the government had ordered it not to carry certain commodities, for whatever reason. If the embargo adopted for a few days in Oct. 2001 on transportation of "toxic inhalants" and, apparently, many other chemicals, had been ordered or urged upon the railroads by the DOT, a court would almost certainly not enjoin the embargo.

7. Part of the reason railroads did not fare well in *Akron*, Canton is clear from the footnote omitted in the above quotation: "We cannot refrain from noting at this point that none of the petitioner railroads has availed itself of opportunities to comment upon the safety regulations of DOT and NRC concerning the rail transport of nuclear materials."

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June 26, 2015

## Court Decision Protects California Residents from Crude Rail Disasters

By Devorah Ancel

<http://www.sierraclub.org/planet/2015/06/court-decision-protects-california-residents-crude-rail-disasters>

Millions of California residents can breathe a sigh of relief after a federal court dismissed a legal challenge to California law SB 861 which protects residents from the devastating hazards of crude by rail transport. The law requires railroads to prepare comprehensive oil spill response plans and to demonstrate financial solvency to ensure that the railroads -- and not the impacted communities -- pay for damages in the event of an accident, including a worst-case scenario oil spill. The California state legislature, reacting to the dramatic surge in crude oil trains transporting volatile crude through the state, passed the law to protect communities against the hazards of explosive crude that threaten property and state waters, including drinking water sources.

The legal challenge, brought by rail industry interests, claims that federal railroad safety laws preempt the state statute. The railroads highlighted that the costs of preparing spill plans and conducting training and drills to comply with the law would create overwhelming harm to them and therefore enforcement of the law must be halted. However, the railroads' arguments failed to acknowledge the devastating impacts that oil spills wreak on communities and waterways when first responders and railroads are not adequately prepared to respond to emergencies, especially the crude rail disasters [e.g., 1, 2, 3, 4] that have become all too frequent in recent years.

Sierra Club and its allies filed an amicus brief in the case defending the state law and argued that the state has the authority, and even the duty, to demand that railroads have plans in place to respond to disasters and protect waterways from oil spills. Specifically, SB 861 is part of a cooperative federal-state legislative scheme of preparing for and cleaning up oil spills governed by the Oil Pollution Act of 1990 and the Clean Water Act. These statutes expressly preserve state authority to impose additional requirements and liability beyond what is mandated under federal law. This preservation of state police powers recognizes the deeply rooted role states play in protecting their residents and territories from oil spills. Indeed, the railroads' principal argument is a draconian proposition, as industry argues that the Federal Railroad Safety Act swallows up all other federal and state authority whenever applied to railroads. The court dismissed the railroads' challenge as premature since SB 861 has not yet been implemented. The decision allows the state to implement regulations requiring increased accountability from railroads.

### **The Explosion of Crude by Rail Traffic and its Consequences**

The devastating impacts of crude rail disasters have become all too real as more crude spilled from trains in 2013 than in the last four decades combined, totaling more than 1 million gallons. 2014 was marked by the greatest number of crude rail accidents of any year on record. Recent fiery derailments and spills including in Lac Megantic, Quebec, Mount Carbon, West Virginia, and

Lynchburg, Virginia resulted in 50 deaths, thousands of evacuations, leveled downtowns, and contaminated drinking water sources. Unfortunately, the federal government has done very little to improve crude by rail safety, recently finalizing new crude rail safety regulations that leave old, deficient tank cars on the tracks for 10 more years and significantly reducing information access to first responders and communities, which need to understand crude characteristics and rail routes used to transport this hazardous commodity. Further, federal regulation fails to address all together the financial solvency of railroads or require even a minimum level of insurance coverage in the event of a crude rail accident, placing communities and states on the hook if railroads are unable to cover the cost of damages.

As the safety record of this hazardous industry continues to plummet, plans to expand crude by rail transport in California are well underway. Currently, crude rail terminal projects that would ship millions of gallons of volatile crude each day through the state are proposed or already operating at numerous California refineries and export facilities including in Richmond, Pittsburg, Stockton, San Luis Obispo, Bakersfield, and Los Angeles. Rail lines servicing the projects span the entire state, including through Sacramento, Davis, Berkeley, Oakland, San Jose, and the greater Los Angeles area, placing millions of California residents at risk of the devastating impacts of a serious crude rail accident.

SB 861 promotes preparedness to respond to incidents that occur when trains derail, spill oil, and create local environmental disasters that demand emergency response and clean up. This court ruling is a victory for Californians threatened by the massive expansion of crude by rail infrastructure and shipments and the resulting risks of derailments, spills, and explosions. Other states should follow California's lead by passing similar statutes that provide the more than 25 million Americans that live in crude-by-rail blast zones with the protections they deserve.

*Devorah Ancel is a staff attorney with the Sierra Club's Environmental Law Program.*

## WHAT DO OIL TRAIN EXPLOSIONS COST?

And why cities and towns would have to pay the damages.



*Still from video of Lac-Mégantic disaster. credit Anne-Julie Hallee*

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Author: **Eric de Place**

([@Eric\\_deP](#)) on December 18, 2014 at 6:30 am

Given the nasty tendency for oil trains to explode when they derail, it's probably worth asking what a catastrophic accident might cost. No doubt, the thousands of communities visited daily by oil trains would like to know what sort of financial risks they are exposed to. Unfortunately for these governments, the available data suggest that a reasonable worst-case-scenario explosion could do several billion dollars of damage—sums far in excess of railroad insurance coverage.

But how many billions are we talking about?



Oil train derailment and river contamination, Aliceville, AL (2), by John L. Wathen (Used with permission.)

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It's a surprisingly difficult question to answer with any real precision. The widespread deployment of unit trains loaded with crude oil is such a recent phenomenon that there is not a lot of history to guide estimates of accident costs. The recent oil train accidents in Lac-Mégantic, Quebec, and Lynchburg, Virginia, are commonly used as guideposts, but officials are still cleaning up these accidents and assessing the damages, so the accounting remains incomplete. For a sharper picture, you have to examine other sources: things like lawsuits against railroads that have released hazardous materials; insurers' estimates for comparable events like terrorist attacks; and estimates used by federal regulators for the cost-benefit analysis they must do in tandem with their proposed oil train rules.

It doesn't help that the most obvious place to look for damage cost estimates is also the least helpful: the federal government's own databases. Railroads file their own reports on accidents that cause a hazardous material release, but the numbers are not useful. In the draft July 2014 Regulatory Impact Analysis (RIA) that accompanied the proposed rules for oil and ethanol trains, the US Pipeline and Hazardous Materials Safety Administration (PHMSA) acknowledged that its "hazardous material incident report database often contains inaccuracies." The agency "believes that response costs and basic cleanup costs, when they are reported, do not represent the full costs of an accident or the response."

Moreover, initial incident reports are frequently not updated by the railroad. For example, in the case of the November 2013 oil train explosion in Aliceville, Alabama, PHMSA notes that "the initial estimate of crude oil lost was 28,000 gallons. After a follow-up inquiry from PHMSA personnel, the carrier has revised this estimate to more than 450,000 gallons." And subsequent reporting put the total lost at 630,000 gallons—more than 22 times the original filing. The most direct comparison is the Lac-Mégantic accident because it was the first major oil train explosion in a populated area. It killed 47 people. [tweet]City officialsestimate that it will cost \$2.7 billion to rebuild[/tweet] the broken village over the next decade. The tank cars released 1.6 million gallons of crude oil, of which about 26,000 gallons went into the nearby Chaudeiere River. The city estimates that the accident contaminated 12.3 million gallons of sewer, lake, and ground water, which will cost \$200 million in apparently additional money to clean up. The potentially liable parties—the railroads, oil shippers, tank car lessors, and federal regulators—are being sued by the victims, as well as by each other to determine who is at fault—and who will pay. Until there is a settlement, we won't have the final tabulation for the damages. The 2014 Lynchburg derailment offers another set of clues. PHMSA, in its Regulatory Impact Analysis, estimated that based on the Lynchburg derailment, your basic run-of-the-mill oil train

explosion with no loss of life will probably set you back around \$300 per gallon for property damage, remediation, and cleanup costs.

The railroad responsible, CSX, reported to the Federal Railroad Administration that the emergency response and cleanup costs for that incident ran to \$8.99 million. (Of this \$8.99 million cost, an estimated \$5 million was due to environmental damage.) PHMSA used the railroad's reported costs together with its own estimate of 30,000 gallons spilled, to come up with their \$300 per gallon estimate.

Yet the Lynchburg figure is very likely too low for estimating potential future costs. In comments they submitted on the federal government's proposed oil and ethanol train regulations, EarthJustice and Forest Ethics explain:

*First, the [National Transportation Safety Board] investigation has not yet been completed for [Lynchburg], and the clean-up is still underway. The full extent of the potential and actual harm is likely to increase as both the investigation and clean-up progress. Second, it has been reported that the Lynchburg derailment involved primarily CPC-1232 tank cars, which are less prone to puncture and spilling oil than DOT-111s. An accident involving [legacy] DOT-111 tank cars, given their fragility, would almost certainly spill more oil and cause greater harm and therefore result in a higher per gallon cost. Third, while the Lynchburg accident caused serious contamination of the James River, it would have been far worse had a derailed tank car landed on the town side of the tracks during a busy lunchtime instead of in the river.*

In the same draft RIA cost-benefit analysis, PHMSA also estimated upper-end damages for an oil train derailment causing a "higher consequence event" in an area of average population density along a train route. (By PHMSA's reckoning, 141 people per half square kilometer is average; it's just a bit more than the small town of Lac Mégantic with its 136 people per half square kilometer.) The agency pegged those costs at \$1 billion for lives lost, property ruined, and the cleanup. If the event takes place in an area five times as dense, as in an urban center, PHMSA said the event would produce roughly \$5 billion in total damages.

Yet this method, too, may severely understate the actual costs. PHMSA's math relies on a little-known technical variable, the Value of Statistical Life (VSL), which in 2014 is calculated at \$9.2 million based on expected average lifetime income. Consider that the family of Zoila Tellez, killed at the scene of a 2009 ethanol train explosion in Cherry Valley, Illinois, settled a lawsuit with the Canadian National railroad for \$22.5 million— 2.5 times greater than the value used by PHMSA for its estimates.



Screen shot of BBC footage of ND oil train explosion. [Screen shot of BBC footage of ND oil train explosion.](#)

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Legal settlements like the Cherry Valley case are another way to estimate the potential costs of an oil train explosion. We can examine rail accidents that resulted in the release of "Toxic Inhalation Hazard" materials like chlorine where railroads were successfully sued for damages.

In the business, these are considered something like nightmare scenarios because they can affect large areas and therefore large numbers of people. They are probably not directly comparable to an oil train derailment, but the associated settlement payments are relevant.

In June 2005, two Norfolk Southern trains crashed into each other in Graniteville, North Carolina. A single tank car of chlorine ruptured and released enough material to kill 9 people, injure 554, and force the evacuation of 5,400 others. According to a recent law review article, “The railroad settled a class-action lawsuit with the 5,400 people displaced by the accident, agreeing to pay \$2,000 to every household within a one-mile radius for inconvenience and \$200 per day for each person kept away from his or her home during the cleanup effort.”

A textile plant, Avondale Mills, was located near the scene of the accident and several mill workers were among those killed. The accident was the final straw. Already struggling against global competition, the disruption proved insurmountable and the firm laid off 4,000 workers. Avondale then brought suit against the railroad, seeking over \$450 million. After four weeks of trial, the parties settled the lawsuit for an undisclosed amount.

In another case, a CSX tank car in a New Orleans railyard burst into flames, releasing a poisonous gas from a volatile compound used to make synthetic rubber. A Louisiana jury awarded \$3.5 billion in punitive damages to 8,000 residents affected by fire. In 1997, after a decade of appeals, CSX settled the case for \$850 million.

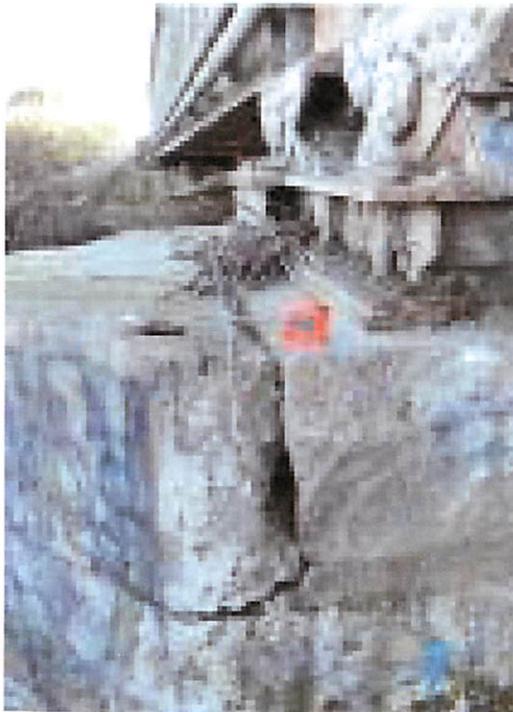
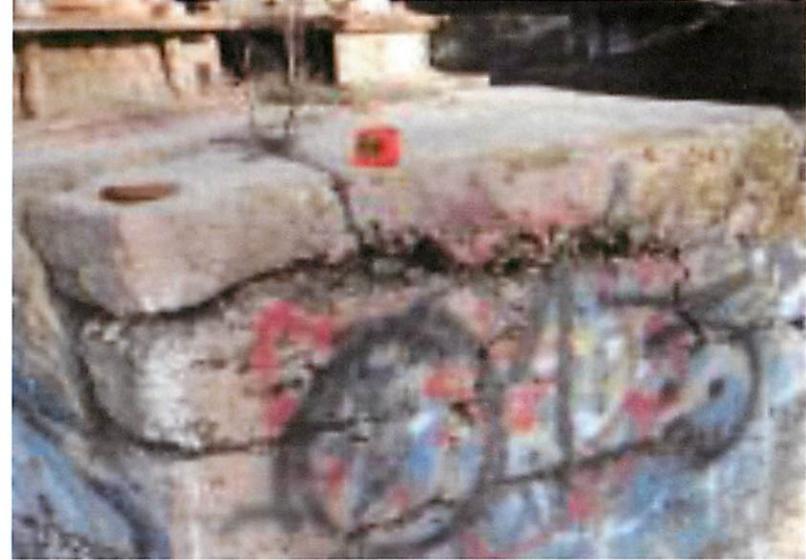
Another way to ballpark oil train explosion costs is with numbers that the railroads themselves sometimes use. A damage assessment report prepared in 2006 by the American Academy of Actuaries for the President’s Working Group on Financial Markets analyzes terrorism risk. (Railroads cite this report when attempting to convince regulators they need special tariffs or protection from the potential financial ruin caused by the enormous uninsured damages from an accident involving hazardous material like chlorine.) The Actuaries group ran through several scenarios of insured loss estimates in variously sized cities. They pegged these numbers for the closest analogy, a truck bomb, at \$3 billion for Des Moines, \$8.8 billion for San Francisco, and \$11.8 billion if the incident occurred in New York City.

We can say with some confidence that if the loaded oil trains that went off the rails near downtown Seattle or Philadelphia had exploded, the damage could have ranged well into the billions. Given that the Lac-Megantic oil train inferno cost at least \$2.7 billion and experts ballpark a Des Moines truck bomb at \$3 billion, it’s fair to believe that an explosion in a bigger city could cost much more—perhaps something on the order of \$5 billion that PHMSA estimates. When the railroads insist on running loaded oil trains past sports stadiums on game night or through the heart of cities during major festivals, it’s especially problematic that they do not carry insurance proportional to the risks they introduce.

The under-insurance problem is bad enough in cities like Spokane and Portland that sit alongside the major railroads that carry perhaps \$1 billion in insurance. In places like Grays Harbor, Washington, or Clatskanie, Oregon, served by railroads owned by a short line railroad-holding company, the paltry \$500 million or so they carry in insurance coverage could almost be a joke. Except that there’s really nothing funny about it.

<http://www.sightline.org/2014/12/18/what-do-oil-train-explosions-cost/>

# 107 or #109



PLANNING COMMISSION

AGENDA ITEM: 3  
DATE: 2/5/16

DO NOT REMOVE FROM FILE

## WILL THIS BRIDGE HOLD 2.4 MILLION GALLONS OF CRUDE?

OCEANO, CALIFORNIA

UNION PACIFIC RAILROAD BRIDGE OVER ARROYO GRANDE CREEK

NEAR 22<sup>ND</sup> ST. GRADE LEVEL CROSSING

BRIDGE IS IN EXTREME DISREPAIR

109  
or  
Mona Pastor Oceano #107

## Why I am Against the Phillips66 Railroad Spur Project:

My name is Mona Pastor. I am a retired librarian and grandmother living in Oceano. For public health and safety reasons I am definitely opposed to this proposal. I urge you to vote against this expansion of the refinery that would allow Phillips66 to transport millions of gallons of flammable crude tar sand liquids via diesel train through our county neighborhoods, towns and agricultural fields.

I live 0.7 mile from the railroad crossing on 22<sup>nd</sup> St. but 88% of my Oceano neighbors also live within the one mile evacuation zone, should a derailment occur. Many of these families live within a couple blocks of the railroad tracks. Their homes are in the area that could be burned by a derailment's explosion. This is not an issue of NIMBY, for over 95,000 SLO County residents live within that one mile blast/evacuation zone (35% of all county residents

Note: Looking at specific county cities the rates of population living in that zone go from 37% to 100%: Grover Beach (76%), Pismo Beach (37%) and San Luis Obispo (71%). In North County there are also high rates of neighborhoods within the blast/evacuation zone: Paso Robles (45%), Atascadero (52%), Templeton (63%) and Santa Margarita (100%). Town such as Arroyo Grande with fewer residences in that zone have valuable commercial and tourist districts that would suffer with the decrease in our air quality.

This proposal affects all of us in SLO County whether we work at a library or an oil refinery. We all want safe neighborhoods for our children and clean air to breathe. Many schools are in the blast/evacuation zone, and all of our hospitals and trauma centers are near the railroad tracks. In the event of a derailment anywhere in the county, there is a possibility that trauma care could be compromised by the explosion and resulting fire.

Over 500 Oceano residents live in densely laid out mobile home communities situated ¼ mile from the tracks. Our school, library branch, Boys and Girls Club, churches, market and proposed CHC Health Care Offices are also within half a mile of the tracks. A derailment on one of the curves in my Oceano area, or over the poorly maintained 22<sup>nd</sup> Street bridge R.R. crossing could set up an explosion of black clouds over 300 feet high, jeopardizing lives and property, and endangering our communities' water supply (our OCSD wells, pumping equipment and offices are blocks from the tracks).

A derailment could also cause toxic waste to seep through the sandy fill soils of the neighboring fields contaminating our actual sources of water. We need water daily. The repair of vital equipment could take much time and have to be paid for by County funds, since corporate reimbursement to individuals, businesses and governments often takes years after an oil spill or train derailment. (The oil train derailment in Lac Magentic, Quebec, happened in mid-2013 and no compensation was received until mid-2015.)

Even if there were to be no catastrophic derailment, our air quality would suffer due to the particulates released by the trains: 1) each tanker has an outlet valve that releases particulates from all 100 cars and 2) the double diesels hauling each of the heavily laden mile-long trains will pour out diesel particulates.

This degradation of our atmosphere by sulfur dioxide and other chemicals outlined by the California Nurses Association in their statements) will cause more cases of asthma, chronic lung disease, and cancer - especially among our children and seniors . It will also make our beautiful towns less attractive to the thousands of tourists who visit SLO County's beaches, wineries and shops.

We have almost a 49% home ownership rate in Oceano. One derailment or explosive spill would lower our property values in addition to any human injury or material damage to structures. SLO County does not have the budget to handle infrastructure repair at the level an explosion could cause. A multi-national corporation is gaining product for export to foreign countries while our citizens, homeowners and businesses are taking all the risk - loss of health, injury, shelter, loss of income, loss of inventory and FEMA Loan bureaucracy. Again, corporations are slow to reach to financially compensate for losses.

I urge rejection of this Phillips 66 Rail Spur Project because of the immediate public health issues caused by unavoidable increased particulates and toxic chemicals such as sulfur dioxide in our air. Additionally the possibility of an explosive derailment in a residential area is a risk that our SLO County towns should not have to take.

Sincerely,



## SLO County's Area Land Use Policy Does Not Permit A Crude Oil Rail Terminal

The Santa Maria Refinery currently occupies only a small portion of its total land area. Why is that true? It's because, by design, the large vacant areas provide a desirable buffer from adjacent uses and an area where wind-carried pollutants can be deposited on-site, thereby not affecting neighboring properties.

This is particularly important concerning adjacent land used for agricultural purposes, and for nearby residential lots.

The San Luis Obispo County Area Plan Policy specifically addresses this issue in order to protect property owners in adjacent parcels from further invasive pollutants.

In Appendix G to the Final EIR, the Consistency Analysis included the following -- "The policy recognizes that expansion of industrial uses in the vacant land portion of the Rail Spur Project Site may be appropriate in the future to accommodate **offshore** oil and gas lease sales, but does not envision expansion for other purposes such as those proposed in the Rail Spur Project."

Therefore -- the Phillips 66 rail project is inconsistent with the County's Land Use Policy in the Nipomo Mesa area. And the Final EIR confirms it.

That major inconsistency is a major reason to vote "NO PROJECT" on Phillips' rail terminal.

John Anderson, Nipomo

PLANNING COMMISSION

AGENDA ITEM: 3  
DATE: 2/5/16

Source: FEIR, Table G-3, Page G-78

DO NOT REMOVE FROM FILE

130. Phillips' Property Rights Do Not Extend To Harming Neighboring Communities (2:05):

Speaker: Pearl Munak

Hello, I'm Pearl Munak and I live in Paso Robles

The rail issue must include a discussion of property rights. Phillips' supporters would likely say the company owns the land on which a refinery was built 60 years ago. *And because the land is zoned for industrial use, they have the right to do whatever they want.* They own the property and it's perfectly fine to use the passive, open land to build a highly active rail terminal and offloading facility.

But it's not as simple as that. Because SLO County, decades ago, also deliberately permitted the construction of thousands of residential homes on the Mesa, across Highway 1 from where the terminal might be built. Along with the permission to build homes, came something else. It gave every one of those homeowners property rights.

It doesn't matter whether Phillips or some other oil company arrived on the Mesa first. The timing means nothing. The fact that homeowners exist there gives them property rights as well. The SLO County Planning Department and the Board of Supervisors secured those rights when they approved The Woodland Specific Plan.

Property rights imply that you can improve your land in the way you wish. However, they don't give you the right to build something that trespasses on someone else's rights ... including their human rights.

SLO County's government Website affirms that citizens have those human rights. Its primary Vision calls for cultivating "a responsible and caring community - safe, resilient and healthy."

What Phillips proposes breaches all of that. The impacts of their rail terminal won't remain on their property ... that's absolutely impossible.

The extensive pollution the new facility will generate will flood across Highway 1 into multiple communities ... air pollution, noise and vibration pollution, visual pollution, odor pollution and light pollution. And if there's a rail accident there, there's no way the effects of fires, explosions, shrapnel and toxic smoke will remain on their property. The safety, health and financial well being of thousands of residents will be violated.

Phillips has the right to build <sup>be</sup> on their property so long as it doesn't trample on the property and human rights of the citizens of SLO County. But that's exactly what they'd be doing. What they plan is a reckless disregard of other people's rights. That's why the rail terminal must be rejected.

(Hand one copy of your statement to each commissioner + three copies to the clerk)

PLANNING COMMISSION

AGENDA ITEM: \_\_\_\_\_  
DATE: 3  
2/5/10

DO NOT REMOVE FROM FILE

February 4, 2016

Statement to the San Luis Obispo Planning Commission  
San Luis Obispo, California

My name is Nick Despota, and I live in Richmond, in the Bay Area. Our region is the home to 5 refineries, including Phillips 66. Because of the design of this project—2 refineries separated by some 250 miles, functioning as one—what is decided *here* can dramatically effect what can happen where I live—indeed, in towns and cities throughout northern and central California.

Please consider what these 4 things have in common:

- the methane gas leaking at Aliso Canyon even as we speak;
- the oil pipeline rupture that fouled beaches in Santa Barbara county;
- the derailment of 3 tanker cars in Martinez, California, just last month;
- and the contamination of drinking water in Flint, Michigan.

They all resulted from a *misplaced trust* in the safety of familiar technologies, and the ability of public officials to assess the risk associated with those technologies.

Consider the Phillips 66 proposal through the lens of a risk/benefit analysis: a fossil fuel corporation and its stockholders stand to enjoy all the benefits, while the people of California would shoulder all the risks—for decades into the future.

The Planning Commission staff concluded that the environmental costs are too high, the risks to public health too serious, and have recommended denial of this reckless project.

People around the state applaud the judgment of your staff.

On behalf of my family, my neighbors, and especially those living near the railroad lines over which long tanker car trains would travel, I urge you to follow your staff's recommendation and deny this project.

Please don't create the conditions for another environmental disaster somewhere, someday in this state.

Thank you for your consideration.

Nick Despota  
633 Kern St  
Richmond CA 94805

nick@lumina-media.com

PLANNING COMMISSION

AGENDA ITEM: 3

DATE: 2/5/16

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40. How Phillips' Crude-By-Rail Strategy Would Impact One California Town (Guadalupe) (1:46):

Speaker: Richard Robinson

Hello, I'm Richard Robinson and I live in Arroyo Grande.

I'd like to give you an example of how Phillips' crude-by-rail plan would affect just one of our neighbors ... the town of Guadalupe, a couple of miles across our County's border. And I'll do it through the eyes of the person who is their primary first responder.

At a council meeting in late March 2015, the city's Chief of Police, who's also its Safety Officer said (and I quote) ...

"I talked with CAL Fire about this issue. Guadalupe is the closest municipality to the plant. (If there were an accident there) shock waves would be felt here. In an explosion, the blast zone would be 1.5 miles. Rail cars would be launched into the air ... about 3,000 feet with shrapnel hitting the ground. The greatest danger for Guadalupe would be the toxic smoke and soot from fire ... because we're downwind.

"Any derailments of these tankers in Guadalupe itself would cause a 7,000 foot evacuation -- that's the entire city.

"My major concern is lack of sufficient fire and police personnel. We'd get other resources at some point, but there would be delays.

"We have a lack of heavy lift equipment and phone capability for our emergency vehicles.

"We lack training for leaking tankers and catastrophic incidents.

"The state expects to generate taxes to help pay for such incidents, but how much would actually come to Guadalupe?

"This is not a money issue. I'm asking -- what value added is there to offset the risk and safety issues for citizens?"

A councilman then focused on other issues - "We have a new housing project that will increase our homes by 50%. But seeing the trains (nearby) will be a detriment to new home buyers. Also - we're nothing but crops ... and diesel smoke would be terrible. And (in a disaster) there's the potential of losing our people and water tanks. Phillips is a good neighbor, but that's not the issue here."

(Hand one copy of your statement to each commissioner + three copies to the clerk)

Source: Guadalupe City Council Meeting, 3/24/15

PLANNING COMMISSION  
AGENDA ITEM: \_\_\_\_\_  
DATE: 3/25/10  
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4. The History Of Oil Companies On The Central Coast Is Not An Impressive One (1:55):

PLANNING COMMISSION

Speaker: Myra Akel

AGENDA ITEM: 3  
DATE: 2/5/16

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Hello, I'm \_\_\_\_\_ and I live in \_\_\_\_\_.

People come to SLO County because it's a safe place to raise a family, a stable place to earn a living, a place with clean water and air, and it has an enlightened stewardship of the environment. And it's been a great place for our core businesses to thrive – agriculture, wine, tourism, education, and recreation.

The oil industry has also been part of our history, but it's been a stormy past. In exchange for the jobs and revenue it creates, it's also caused the most destructive impacts ever to the Central Coast and to our quality of life.

For example:

- The toxic contamination from the 1926 tank farm fire in SLO, covering 900 acres, is still with us today.
- The 1969 Santa Barbara Channel accident, spilling 100,000 barrels of crude, was the largest spill in U.S. waters, until it was topped by the Exxon Valdez and Deepwater Horizon disasters.
- The monumental oil spill at Avila Beach devastated that community in the 1990's. Almost 7,000 truckloads of contaminated material had to be removed. Homes and businesses were razed as a result of an enormous excavation.
- The massive oil leakage at the Guadalupe Dunes, discovered in the early 1990s, is also one of the biggest spills in U.S. history. And it's still being cleaned up. Unocal Corporation was fined \$44 million.
- In May 2015, 143,000 gallons spilled into the Pacific and onto Refugio and other beaches, costing \$257 million.
- And old, active and abandoned oil pipelines have leaked and continue to leak into our groundwater and creeks.

Our county's General Plan sets goals for the way we live. And a key element in that plan is incorporating input from residents. Our Boards of Supervisors have ratified that this is essential to final decisions.

So the people are here today to tell you -- considering the oil industry's dreadful track record, buying into Phillips' crude-by-rail business model will negatively impact the way of life we hold dear.

(Hand one copy of your statement to each commissioner + three copies to the clerk)

[https://localwiki.org/slo/Tank\\_Farm\\_Fire\\_of\\_1926](https://localwiki.org/slo/Tank_Farm_Fire_of_1926)  
[http://en.wikipedia.org/wiki/1969\\_Santa\\_Barbara\\_oil\\_spill](http://en.wikipedia.org/wiki/1969_Santa_Barbara_oil_spill)  
[http://en.wikipedia.org/wiki/Avila\\_Beach,\\_California](http://en.wikipedia.org/wiki/Avila_Beach,_California)  
<http://articles.latimes.com/1999/nov/22/news/mn-36391>  
<http://www.independent.com/news/2015/aug/05/refugio-oil-spill-likely-far-larger-projected/>

76. Phillips' Refineries Are Not Invulnerable To Accidents (1:50):Speaker: Gail RyanAGENDA ITEM: 3  
DATE: 2/5/16

DO NOT REMOVE FROM FILE

Hello, I'm \_\_\_\_\_ and I live in \_\_\_\_\_.

We can't use the Nipomo Refinery's past safety record as evidence of safety in the future. Here's why ...

- Phillips is dramatically changing its method of conducting business. For the first time - it's asking to bring in and exit hundreds of mile-long crude oil trains each year. It's asking to build a rail terminal and pumping station to offload the crude. So given an entirely new method of operation, and their lack of experience in crude oil rail operations, their past safety record cannot be taken into account.

Then, when we look at the corporation's recent record of mishaps, we see it's far from invulnerable, even during non-rail operations. For example ...

- At their refinery in Contra Costa County -- a tank was over-pressurized, causing a 20-foot rupture, releasing sulfur compounds and natural gas into the air.
- At their refinery in the United Kingdom -- steam leaked from a plant. Two workers were seriously injured, airlifted to a hospital, one in critical condition.
- At their Long Beach refinery -- sulfur dioxide leaked into the air. Workers were told to seek shelter. But 11 needed emergency treatment at a hospital, because they'd already breathed the material.
- At their Borger Texas refinery, work involving acid resulted in three workers being hospitalized, with one sent to a burn unit.
- In 2014 they were fined almost a quarter million dollars by San Francisco Bay air quality officials for 19 air pollution violations.
- In 2015, 25,000 gallons of diesel fuel leaked into the Mississippi River from a pipeline at a Phillips terminal.
- And in 2015, both Phillips and ConocoPhillips paid an \$11.5 million fine to California for failing to properly maintain gasoline storage tanks, putting water supplies at risk.

So, regardless of Phillips' safety record in Nipomo, the firm is clearly not invulnerable to accidents. And if the rail terminal project is approved, the odds of a serious accident occurring here will be vastly increased due to a major change in their method of operation and a total lack of experience.

(Hand one copy of your statement to each commissioner + three copies to the clerk)

(continued)

## 76. Phillips' Refineries Are Not Invulnerable To Accidents (cont.):

<http://www.dailybreeze.com/general-news/20131231/11-workers-treated-after-hazardous-materials-leak-at-phillips-66-refinery-in-wilmington>

<http://www.latimes.com/local/lanow/la-me-ln-phillips-66-wilmington-workers-20131231-story.html>

<http://www.grimsbytelegraph.co.uk/Conditions-unchanged-workers-seriously-injured/story-20021439-detail/story.html>

<http://www.ksby.com/news/phillips-66-fined-230k-for-sf-bay-air-violations/>

<http://globalnation.inquirer.net/99022/calif-releases-final-report-preventive-steps-for-oil-refinery-safety>

<http://www.phillips66.com/EN/about/our-businesses/refining-marketing/refining/SFRPA/Documents/Mins082712c.pdf>

<http://www.phillips66.com/EN/about/our-businesses/refining-marketing/refining/SFRPA/Documents/P66-Min-102212f.pdf>

<http://www.phillips66.com/EN/about/our-businesses/refining-marketing/refining/SFRPA/Documents/Mins062512b.pdf>

<http://amarillo.com/news/latest-news/2014-03-19/borger-refinery-mishap-hurts-several-workers>

[http://m.kplctv.com/kplctv/db\\_348388/contentdetail.htm?contentguid=ySbGgmF3](http://m.kplctv.com/kplctv/db_348388/contentdetail.htm?contentguid=ySbGgmF3)

<http://fox2now.com/2015/04/17/diesel-fuel-found-in-mississippi-river-after-pipeline-leak/>

<http://m.nasdaq.com/article/conocophillips-phillips-66-agree-to-settle-allegations-of-gas-storage-violations-20150507-01907>

**Comments to the SLO Planning Commission, Febr. 4/5<sup>th</sup>. 2016.**

Re: Phillips 66 proposal for rail spur extension in Nipomo.

By: Klaus Schumann, 26 Hillcrest Drive, Paso Robles, CA 93446, Ph: (805) 238-4454.

Mr. Chairman, Members of the Commission:

The planning staff has it exactly right: this project substantially increases the risks to public health and safety and the benefits are not significant enough to outweigh the risks.

Since 1991, my wife and I have been homeowners in the hills of Paso's beautiful west side. Our house overlooks the entire city, the Salinas River Valley, all the way to Black Mountain. Yet... we are living within the 1-mile impact zone, no matter whether three or five trains per week.

Just think about it: the Mid-State Fairgrounds, all homes and businesses along Pine St. and Riverside Ave., all restaurants, wine boutiques and shops around City Park, the Park Cinemas, the Studios on the Park, the Police and Fire Departments, the Superior Court and the planned grand project replacing the Haywood lumber yard..... all of these either directly back up against or lie within a stone's throw of the rail road tracks!!

Moreover, our city has worked very hard to become a tourist end destination. Paso these days is surrounded by vineyards and their tasting rooms. Tourism and the wine industry simply do not mix well with mile long tanker trains loaded with highly toxic and volatile oil shipped from far distant places. And what about our precious water supply in the event of a massive oil spill?

Please follow the staff's recommendations and do everything in your power to stop this ill-conceived project.

Thank you for your attention.

PLANNING COMMISSION

AGENDA ITEM: 3  
DATE: 2/5/16

DO NOT REMOVE FROM FILE

188  
Every Since The 1980s, When SLO County Began Approving  
Residential Communities On The Nipomo Mesa,  
There Has Been A Huge "Buffer" On The Phillips 66 Property,  
Which Purposely Maintains That Area As

**PANORAMIC &  
EXTREMELY "PASSIVE"**

---



PLANNING COMMISSION

AGENDA ITEM: 3

DATE: 2/5/16

DO NOT REMOVE FROM FILE

**Phillips' Vastly Changed Business Model  
Would Turn "Passive" Into An  
EXTREMELY "ACTIVE & INVASIVE" USE OF LAND.  
A Rail Terminal Would Have Devastating Impacts:**

- Air Pollution
- Noise Pollution
- Visual Pollution
- Light Pollution
- Motion Pollution
- Vibration Pollution
- And The Potential For Disaster ...  
Derailments, Fires, Explosions, Toxic Smoke, Property Damage,  
Physical Injury/Death, Health Impacts, Economic Damage,  
Reduction In Property Taxes, And More



On what is now a panoramic vista of grazing land, rolling dunes and the Pacific Ocean in the distance, Phillips plans to build an intrusive, crude oil off-loading facility; a super-site for Phillips' pipeline on wheels strategy".

This Project is anything but a Spur!

It's 5, mile long tracks on more than 40 acres, including an infrastructure to accommodate 250 trains a year; each off-loading crude oil 12 hours a day.

There would be the continuous din, of steel on steel from the movement of crude oil tanker cars as they are positioned for unloading, reassembled, and then depart the facility. All in addition to light, noise, air pollution and diesel emissions from the 24 hours of combined diesel operations of 3 diesel locomotives in a concentrated area that is classified as a Class 1 impact. To suggest that this industrial visual blight can be mitigated is pure nonsense.

The FEIR states:

*The eastern extension of the proposed rail spur and associated trains would reduce the quality views of the open space as seen from portions of US Route 1 and other public access areas, resulting in a potentially significant impact.*

*The expanded industrial use and visibility of the rail spur and associated trains on the existing open space would cause the project to be more noticeable as seen from public view points on State Route 1.*

*The Project would also create a new source of substantial light and glare which would adversely affect nighttime views in the area*

A "visual impact" is when something that doesn't now exist, suddenly materializes that is offensive. If a strong contrast occurred where project features or activities attract attention **and dominate the landscape setting**, this would be considered a **potentially significant impact on visual character or quality of the site.**

*The County of San Luis Obispo has specific goals, policies and guideline that provide a basis for determining levels of potential impact as well as an indication of aesthetic values and sensitivity visual change. These are:*

- Creation of an aesthetically incompatible site open to public view
- Change the visual character of the area
- Create glare or night lighting which may affect surrounding areas.
- Impact unique geological or physical features ...and
- It must preserve open space, scenic natural beauty and natural resources.

Simply stated... The visual encroachment of the industrial refinery-related activities onto the adjacent visual open space would have an adverse effect on the existing character of the site, and would represent a potentially significant impact.

The Phillips response: "an earthen berm shall be constructed around the eastern perimeter of the rail spur. The berm shall be 10' tall and a max of 20' tall above the existing grade" as if this encroachment will magically make the entire project disappear from view. Nice try!

Phillips made no effort to present an artist rendering of the 5 tracks, the strings of 80 black crude oil tankers cue'd up for unloading, the transfer facility and the mile long perimeter of dozens of- 30' light stanchions that would encircle the yard and light it up the facility like a football stadium at night.

The viewing areas that Phillips illustrated in the KVA's were at ground level; presenting only a black gash across the landscape representing the tanker cars. It makes no representation as to what the view would be some 100' higher where residents actually live; and what the rail project would actually look like.

These impacts; while noted as Class 2 impacts; are in reality Class 1 impacts that cannot be mitigated

To have Phillips blithely states that these visual impacts can be mitigated is pure, unmitigated "chutzpah".

Source: FEIR 12/15; 4.1.3.2 Pages 4.1-6

124. What "Petcoke Mountain" At The Phillips Refinery Looks Like (1:40+ time to distribute photo):  
PLANNING COMMISSION

Speaker: Peter Zajac #94

AGENDA ITEM: 3  
DATE: 2/5/16

Hello, I'm \_\_\_\_\_ and I live in \_\_\_\_\_.

DO NOT REMOVE FROM FILE

Few people here have toured the Phillips plant. But even if you did, it's likely you weren't given a tour of their mountain of petcoke. It's something they don't share with visitors. But in just a second, I'll share it with you.

Petcoke is a byproduct of refining heavy crude oil. It consists of small, black, coal-like particles and dust. When left uncovered, it's easily picked up by the winds and blown into local communities. That dust is something humans should not be breathing, if they want to avoid harming their hearts and lungs.

Unfortunately, the rail terminal project will create even more petcoke at the Nipomo refinery. That's because they'd start refining tar sands. And tar sands generates even more petcoke than the refining of traditional crude<sup>1</sup>. Obviously, that would make a bad situation far worse.

So it would be worth your time to see what Petcoke Mountain looks like at the refinery. In 2015 a local photographer decided to see what residents are breathing. I'd like to give each of you the photograph he took.

**(Quickly give each commission member a copy of the two photos, as well as the clerk.)**

The photo was taken from Highway 1, looking west. You can see the sand dunes in the background. Phillips doesn't cover up Petcoke Mountain because it's way too large.

Petcoke Mountain is in the center. For perspective, please note the tiny yellow bulldozer pushing around the black petcoke. The mountain is obviously of alarming size.

As an aside - it would be interesting to see what the bulldozer operator is wearing. We're guessing it's a protective mask so he doesn't breathe the black dust.

The second photo is of a shrub in Trilogy ... demonstrating how the black petcoke dust blows directly from Phillips' land, throughout neighboring communities and into the lungs of local citizens.

So those are visuals of what's currently blowing into communities in Nipomo and Arroyo Grande. And with the arrival of tar sands-by rail, it will get only worse.

(Hand one copy of your statement/supporting material to each commissioner + three copies to the clerk)

<sup>1</sup><http://www.nrdc.org/energy/tar-sands-health-effects.asp>

## The Uncovered “Petcoke Mountain” At Phillips Nipomo Refinery

- For Size Perspective, Note The Yellow Bulldozer
  - The Refining Of Tar Sands Yields Higher Amounts Of Petcoke Than The Refining Of Conventional Crude
- (photo taken Jan. 16, 2015 from Highway 1, Nipomo)



**Petcoke Dust Coating Vegetation  
(Myer Lemon Tree) On The Nipomo Mesa - Jan., 2015**



#124

Office: 246 S. Higuera St.  
San Luis Obispo, CA 93401  
Mail: PO Box 1014  
San Luis Obispo, CA 93406



Phone: (805) 544-1777  
Email: info@ecoslo.org  
Online: www.ecoslo.org

#102

*Protecting and enhancing the Central Coast since 1971*

February 4th, 2016

San Luis Obispo County Planning Commission  
976 Los Osos Street, Room 200  
San Luis Obispo, CA 93408

PLANNING COMMISSION

AGENDA ITEM: 3  
DATE: 2/5/16

DO NOT REMOVE FROM FILE

Dear Planning Commissioners,

The Environmental Center of San Luis Obispo, also known as ECOSLO, would like to thank and commend the San Luis Obispo County Department of Planning and Building staff for their recommendation to deny the Phillips 66 Rail Spur Project.

ECOSLO has recently set up docent-led hikes that take place on, historically, open-space trails near Stenner Creek and Bishop Peak, both of which are within the blast zone of the railway.

We would like to urge the Commission, at this point, to ignore any arguments about federal exemptions that are presented by the applicant, and stay focused on the local mandate from your constituents to protect our local and historically open and pristine environment. You, commissioners, must now do your job and follow the recommendation of your staff and the recommendations of your constituents and the people here today.

The true impacts of this project are statewide. We know that you have received numerous letters AND official resolutions from several governing bodies in California, such as the city of Los Angeles, the city of San Jose, and several others asking for the denial of this project.

We urge you to do the same - deny this project.

Sincerely,

ECOSLO Staff & ECOSLO Board of Directors

## PUBLIC COMMENT: MRW ISSUE PAPER INTRODUCTION

Mr. Chairman, I'm Sam Saltoun, a resident of Nipomo. I'm a Professional Engineer with a long career of national and community service and on the Technology Committee for Mesa Refinery Watch.

I want to briefly introduce an Issue Paper from MRW that you have in your documentation package.

It's important to note that the paper is not a position on the overall Rail Spur project. MRW strongly supports the Staff recommendation for denial of the project.

At a meeting we had before he retired, Unit Fire Chief Rob Lewin invited us to review one particular mitigation measure in the Final EIR – HM-2delta.

... He was unsure that the condition, as written, was adequate to shield the county from the most dangerous products implicated in recent rail disasters.

Although the Issue Paper itself is lengthy and technical, it makes one straightforward recommendation – revise HM-2d to read:

*"The refinery shall not accept or unload at the rail unloading facility any crude oil, crude oil mixture or petroleum product with an assigned hazard classification of Packing Group I or Packing Group II."*

We believe that HM-2d is now inappropriately using "API gravity" to limit hazards. API gravity is an oil industry measure of density, not a recognized hazard classification.

The new U.S. DOT rules for High-Hazard Flammable Trains direct a simple test for hazard classification – crude oil is uniquely identified by its "Packing Group" – indicating its "Degree of Danger".

Packing Group is, in turn, uniquely determined by two values obtained through laboratory testing – "flash point"... and "initial boiling point".

San Ardo crude oil now transported through our County by rail is thus assigned to Packing Group III – meaning minor danger. PG III crude commonly self-extinguishes if it's ignited.

... San Ardo crude oil is typical of crudes extracted from the Central Coast's Monterey shale formation.

The Rail Spur project would import Packing Group I crude oil blends, meaning great danger. PG I diluted bitumens are highly volatile, flammable, and can be explosive.

Our county has never experienced massive quantities of these more dangerous crude oil blends, nor has the refinery, in its 60-years, unloaded crude oil from tank cars.

The enterprise represents a new start, fundamentally changes historical refinery operations, and would be a transformative change for the county as well as the region.

Thank you, Mr. Chairman...

PLANNING COMMISSION

AGENDA ITEM: \_\_\_\_\_

DATE: \_\_\_\_\_

2/5/10

DO NOT REMOVE FROM FILE

1. The hazard classification of a liquid is based on its flash point and boiling point.  
 2. The hazard classification of a liquid is based on its flash point and boiling point.  
 3. The hazard classification of a liquid is based on its flash point and boiling point.

Title 49 CFR §173.121  
 Class 3 Flammable Liquids—Assignment of Packing Group

Packing group	Flash point (closed-cup)	Initial boiling point
I		≤35 °C (95 °F)
II	<23 °C (73 °F)	>35 °C (95 °F)
III	≥23 °C, ≤60 °C (≥73 °F, ≤140 °F)	>35 °C (95 °F)

Class 3 Flammable Liquids

Packing group	Degree of Danger
I	Great
II	Medium
III	Minor



## PLANNING COMMISSION APPEARANCE REQUEST FORM

The San Luis Obispo County Planning Commission Welcomes  
Your Comments for the Phillips 66 Rail Spur Hearing

In the interest of time, three (3) minutes will be reserved for your presentation. Please submit this completed form to the Clerk of the Planning Commission when it is your turn to speak. YOU MUST HAVE THIS FORM WITH YOUR NUMBER TO SPEAK, speaker numbers will be called in numerical order. Please keep apprised of the speakers/numbers as your number will be called. If you miss your opportunity to speak, you must request a new number. Please note that you will be granted one 3 minute opportunity to speak per person (we are digitally recording speakers).

Public Comment remarks should be directed to the Chairman and the Commission as a whole and not to any individual thereof. No person will be permitted to make slanderous, profane or personal remarks against any individual

NAME (print):

AMIR BURSTEIN

SIGNATURE:

Amir Burstein

DATE:

2-5-16

### IMPORTANT INFORMATION:

- If your number is not within approximately 20 of the current speaker we ask that you wait outside of the Chambers in one of our overflow areas where the hearing will be streaming for you to view. Staff will be available in overflow areas to help with any logistical questions. The hearing room can only hold 160 people for safety.
- If you wish to submit digital information such as a PowerPoint or digital photos within your 3 minute presentation, please put a sticker with your speaker number on a flash drive and submit to the clerk when it is your turn to speak. Stickers will be available in the lobby with our staff. The flash drive will not be returned as the information will need to be retained for the record.
- Overflow viewing areas are located in the Fremont Theater which is next door to the hearing chambers, Conference Room 161/162 outside the hearing Chambers as well as the lobby area. The hearing will be streaming for viewing at these locations. The hearing can also be viewed online at <http://www.slocounty.ca.gov/planning/meetings.htm>
- If you need assistance with a language translator (Spanish) please notify one of our staff with your speaker number handy.

PLANNING COMMISSION

AGENDA ITEM: 3

DATE: 2/5/16

**Speaker Number 417** DO NOT REMOVE FROM FILE

THE DETAILS OF THE VERY BAD, EXTREMELY HAZARDOUS, POTENTIALLY DISASTROUS AND CATASTROPHIC TRAIN PLAN - ARE WELL-KNOWN.

THE COMMUNITY IS MOST JUSTIFIABLY ALARMED AND ENRAGED AT MERE FACT OF EVEN CONSIDERING PUTTING SUCH A POTENTIAL HAZARD TO LIFE AND HEALTH SNACK IN THE MIDDLE OF A HIGHLY POPULATED AREA.

AN OIL TRAIN PASSING REGULARLY THROUGH THE COMMUNITY WITH 11-CLASS I LOAD = INSANITY.

YOU, THE COMMISSIONERS-SUPERVISORS ARE ENTRUSTED WITH ENSURING THE WELL-BEING AND SAFETY OF THE COMMUNITY.

WE EXPECT YOU TO LIVE UP TO THAT TRUST AND RESPECT THE TRAIN-AS YOU MOST CLEARLY NEED TO DO.

THANK YOU,

AMIR BURSTEIN, SLO. CA.

Diesel Exhaust Pollution Created by Crude Oil Train Locomotives

Hello, I'm Bill Kennedy and I live in Nipomo

One of the unavoidable, worst impacts of the estimated 300 crude oil trains will be diesel exhaust emissions coming from their 900 locomotives each year. Here is what our families will be breathing,

(Please play the video titled "Locomotive Diesel Exhaust" and stop it at 1 minute and 30 seconds)

I moved here 8 years ago because of the beautiful climate. I did not expect to have to wear a respirator in order to enjoy it safely. Please help me breathe easier and vote against the rail spur expansion. Thank you.

PLANNING COMMISSION

AGENDA ITEM: 3  
DATE: 2/15/16

DO NOT REMOVE FROM FILE

55. Phillips Will Do Whatever It Takes To Make A Buck - Including Sidelining Its Rail Cars (1:45):

Speaker: DEBORAH FALKOWSKI #92

Hello, I'm \_\_\_\_\_ and I live in NIPOMUS.

Given Phillips' efforts to bring rail delivery of crude here, you'd think they would make non-stop use of rail operations if they were successful.

Think again. It all depends, at any given moment, on market conditions and whether they can bring oil here cheaper via rail or pipeline. Sometimes delivery will be by rail; other times they'll abandon rail. For example ...

The Wall Street Journal recently reported - "Refiners (like) Phillips 66 said they increased procurement of overseas crudes at the expense of crude-by-rail in the second quarter (of 2015). Phillips 66 CEO Greg Garland told investors, 'We actually set (rail) cars on the SIDING. (Instead) we brought (in) imported crudes.'"

There are three takeaways to all of this:

- #1: Phillips' desire to bring crude oil rail tankers to SLO County will be a "sometime thing." Sometimes they'll use them, sometimes they won't. Their CFO has stated they want rail as a profit-driven "optionality" for when it suits them ... not as a necessity.
- #2: When they're not using some of their 11,000 tankers, they can't hide them from sight. Instead, graffiti-laden cars will likely sit on sidings throughout SLO County, providing us with visual blight ... just as Union Pacific railcars have done in Grover Beach for months at a time.
- #3: When Phillips switches to "overseas" crude oil, jobs and revenues will be lost at crude oil producers here in California.

This tells us that Phillips' desire to introduce crude oil trains here is not an urgent requirement due to lack of pipeline supply. It's simply another option for them to generate the highest profits possible. For them, rail is a "nice-to-have", not a "must have."

(Hand one copy of your statement to each commissioner + three copies to the clerk)

<http://www.wsj.com/articles/irving-oil-to-invest-in-turnaround-project-at-saint-john-refinery-1440080588>  
<http://seekingalpha.com/article/3384805-phillips-66s-psx-ceo-greg-garland-on-q2-2015-results-earnings-call-transcript?page=3>

PLANNING COMMISSION  
AGENDA ITEM: 3  
DATE: 2/5/16  
DO NOT REMOVE FROM FILE

Members of the Commission,

I speak to you today on behalf of People of Faith for Justice (PFJ), an interfaith voice for social and environmental justice on the Central Coast. With widespread support from faith communities and individuals throughout our county who share our values, PFJ promotes an enhanced quality of life, peace, and justice through ongoing education, strategic advocacy, and direct action.

Nearly all of the world's religions have something to say about protecting the environment.

A principle of my own Unitarian Universalist faith calls me to respect the interdependent web of life, of which we are *all* a part.

Christianity has a long, historical tradition of reflection on nature and human responsibility. Many Christian faiths acknowledge that the Bible calls us to care for God's creation.

Millions of Hindus recite Sanskrit mantras daily to revere their rivers, mountains, trees, animals, and the earth. They believe our treatment of nature directly affects our karma.

Islam teaches that humanity is an integral part of the environment. The Qur'an states: "Do good as God has done unto you; and do not seek to cause corruption in the earth; protect the earth from all forms of corruption, and protect all of God's creation from harm and exploitation."

Central to the Jewish treatment of destruction of the environment is the principle of *bal tashit*, a Hebrew term meaning "thou shalt not destroy." Rabbis have called *bal tashit* "an admonition against any kind of waste or willful destruction."

The Dalai Lama refers to a sense of Universal Responsibility as the real source of strength and the real source of happiness. He continues, "If in our generation we exploit every available thing: trees, water, mineral resources or anything, without bothering about the next generation, about the future, that's our guilt, isn't it? But if we have a genuine sense of universal



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Public Comment remarks should be directed to the Chairman and the Commission as a whole and not to any individual thereof. No person will be permitted to make slanderous, profane or personal remarks against any individual

NAME (print):

CHARLES VARNI

SIGNATURE:

*Charles Varni*

DATE:

2/5/16

### IMPORTANT INFORMATION:

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- If you wish to submit digital information such as a PowerPoint or digital photos within your 3 minute presentation, please put a sticker with your speaker number on a flash drive and submit to the clerk when it is your turn to speak. Stickers will be available in the lobby with our staff. The flash drive will not be returned as the information will need to be retained for the record.
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- If you need assistance with a language translator (Spanish) please notify one of our staff with your speaker number handy.

# Speaker Number 73

Phillips told us

- no sig impacts any more at "project site"
- no power or authority over what happens on the UP tracks
- that we could choose trains or trucks

intimidation  
& bullying

- did not land well with me
- Maybe being the 2<sup>nd</sup> largest corp in US gives a sense of entitlement - like they're the big cat playing with us as the mouse
- public comment 24,500 - 150 pro
- up and down the line we hear the same message - deny the project
- ~~you have a rare opportunity~~
- locally there is very little support
- you have a rare opportunity

You have the power to recommend denial - stand up for us.



PLANNING COMMISSION

AGENDA ITEM: 3  
DATE: 2/5/16

February 1, 2016

DO NOT REMOVE FROM FILE

County of San Luis Obispo  
Planning Commission  
Attn: Ryan Hostetter, Senior Planner  
County Government Center  
San Luis Obispo, CA 93408  
Via email [rhoetter@co.slo.ca.us](mailto:rhoetter@co.slo.ca.us) and fax (805) 781-1282

**Re: Support for Denial of Coastal Development Permit for Phillips 66 Company, File Number DRC2012-00095**

Dear Honorable Planning Commissioners:

Surfrider Foundation San Luis Obispo Chapter urges the Planning Commission to deny, in accordance with staff's recommendation, the application for Development Plan/Coastal Development Permit of Phillips 66 Company regarding the extensive modification of the existing rail spur on the southwest side of Santa Maria Refinery. The transport and unloading of crude oil in the manner proposed would allow five 80-car trains each week to gravely threaten the coastal environment of millions of Californians who live in the "blast zone". Surfrider Foundation is a non-profit 501(c)(3) organization that is dedicated to the protection and enjoyment of the ocean, waves and beaches through a powerful activists network. The proposed project is unacceptable to our organization for its overriding environmental impacts, explained in depth in the Final Environmental Impact Report and the Planning Commission's own staff report, including the eleven Class I significant and unavoidable impacts and, as elaborated upon in this letter, the harm to California's priceless coastal resources.

As stated in the staff report, the Department of Planning and Building has found the project to be inconsistent with the goals and policies of the Coastal Plan Policies, South County Area Coastal Plan and Coastal Zone Land Use Ordinance. Additionally, the proposed project contravenes the state's implementation of the Coastal Zone Management Act, through the California Coastal Act, in several ways, including:

*Impacts to ESHA.* The Environmentally Sensitive Habitat Area (ESHA) requirements of the County's General Plan (under the CZLUO) and the California Coastal Act, found in Division 20 of the Public Resources Code, require protection of the ecologically-

significant lands. The current project could permanently destroy over 20 acres of habitat and/or lead to potential mortality for special-status species, including the endangered Nipomo Mesa lupine, the silver dune lupine-dune heather shrubland alliance, as well as sensitive ground-dwelling animals, including the American badger, coast horned lizard, and slivery legless lizard.

As stated in the FEIR, there will be Class 1 impacts to biological resources, including significant impacts to sensitive plant and wildlife species, as well as wetlands, creeks, rivers and waterways. This project represents illegal encroachment into environmentally sensitive habitat area ("ESHA"), including dune vegetation, per Coastal Act section 30240. The proposed encroachment is not necessary for a coastal-dependent use and therefore violates coastal resource protection laws.

*Impacts to water quality.* There could be substantial degradation of water resources as a result of a leak, rupture or spill from a rail car(s) that impacts surface water and/or groundwater that contains a direct or indirect hydrological link to coastal waters. The beach-going public in California enjoy swimming, surfing, fishing and other activities that rely on unimpaired water quality. Unimpaired coastal water resources are critical to maintain public health and protect the coastal economy. These protections are embodied throughout the California Coastal Act, especially in Chapter 3, Article 4 protections of the marine environment. The proposed project would allow up to 250 trains annually to deliver heavy crude for refinement to the Santa Maria Refinery in the California coastal zone, with each train carrying 2.5 million to 3 million gallons of crude oil.

*Loss of beach access.* The greenhouse gas emissions associated with this project are exorbitant. Greenhouse gases exacerbate climate change and sea level rise. The rising sea levels, in turn, narrow the sandy beach that the public uses for recreation. This loss of public access contravenes the Chapter 3, Article 2 of the Coastal Act that protect access opportunities for California residents and visitors. (Sections 30210, 30211, 30212, 30213, and 30214).

Additionally, any beach closures due to oil spills associated with this crude oil transport would also gravely impact beach access, as recently occurred on the beaches of Santa Barbara in summer of 2015, when on May 19, 2015, Refugio State Beach suffered a disastrous crude oil spill due to a pipeline rupture near the ocean's edge. The spill contaminated Refugio Beach and the nearshore ocean waters, killing marine life and closing off this important coastal resources to visitors for a number of weeks, including the opening summer Memorial Day weekend. Officials are still studying the profound consequences of this 142,800 gallon spill. The geographic footprint for the environmental impacts also stretched throughout the Southern California coast. Considering each 80 to 100-car train planned for the Santa Maria Refinery under this proposal would carry up to 3 million gallons of crude oil, the consequences of a spill could magnify these disastrous consequences to the coast recently experienced in the Santa Barbara spill by orders of magnitude.

*Loss of coastal recreation.* Degradation or closure of coastal beach areas due to a resource contamination, resources loss (such as the loss of a surf break) or oil spill will impact a vital resource protected under the Coastal Act. The project poses far too great a risk to coastal resources and, therefore, should be considered inconsistent with the coastal recreation policies of Chapter 3, Article 3 of the Coastal Act. (Sections 30210, 20220, 30223,30240(b)). Additionally, loss of coastal access, described in the section above, necessarily affects the availability of coastal recreation and would also apply here.

*Marine resources.* Oil spills on the coast present immediate harm to ocean fishing and fisheries. An oil spill may permanently affect fisheries and marine life protected areas. Long-term ecological effects include: poisoning marine and coastal organic substrate, interrupting the food chain and creating areas of “dead zone” because of low oxygen. The harms posed by the project contravene the marine resource protections of the Coastal Act, including Sections 30230, 30231, 30232, and 30234.5.

The potential illegal impacts on coastal resources under the Coastal Act as briefly described above, combined with the obvious threat to public safety and health, make the Planning Commission’s only reasonable action to be rejection of this project as unacceptable. We thank you for the ability to comment on this project and urge your denial of the Development Plan application/Coastal Development Permit.

Sincerely,

Angela T. Howe, Esq.  
Legal Director  
Surfrider Foundation

12. Phillips Wants To Cut It Two Ways --  
Profiting From BOTH Pipeline & Rail Delivery Of Crude (1:35):

PLANNING COMMISSION

Speaker: Kimmelman

AGENDA ITEM: 3  
DATE: 2/5/16

Hello, I'm Larry and I live in Nipomo.

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In July, 2015, Phillips's executives held an investor "earnings call." Their CFO commented on what they internally call the Santa Maria "rail rack project" ... that is, their multiple-track, crude oil receiving and unloading facility in Nipomo. (It's the project they've delicately named "the spur.") Their CFO said ...

"We continue to pursue permitting of the Santa Maria rail rack project to increase our crude supply **OPTIONALITY.**" "Optionality"? What does that mean? Here's an independent definition -- it means "left to one's choice; not required or mandatory."

That means Phillips is not between a rock and a hard place regarding their desire for crude-by-rail. They simply want an "option" to bring in crude by train whenever it suits their profit-strategy. If less expensive crude is available via rail, they'll access it via that mode. If not, they'll stick to crude-by-pipeline as they've done for 60 years.

And here's an important note -- Phillips hasn't said a thing about abandoning their pipelines if they get rail access. So -- they want it **BOTH** ways -- pipeline AND rail.

And it's critical to note what the Final EIR says about this issue. It says - "There is adequate crude supply for the Santa Maria Refinery even without the Rail Spur Project."

Therefore -- Phillips doesn't need rail delivery to help the Nipomo refinery survive. For them, rail is a nice to have, not a must have. It's simply an "optionality" at the expense of our citizens.

And speaking of options -- our commissioners and supervisors have an option. We urge you to use it to vote No on the Phillips project.

(Hand one copy of your statement to each commissioner + three copies to the clerk)

42. The Derailment Of Crude Oil Rail Trains Cannot Be Prevented Or Mitigated. (1157) COMMISSION

Speaker: MICHAEL MAJIDEN

AGENDA ITEM: 3  
DATE: 2/5/16

Hello, I'm \_\_\_\_\_ and I live in Nipomo.

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Let's discuss the causes of train derailments, and there are many. The reality is, neither Phillips, Union Pacific nor SLO County can prevent or mitigate the causes. And regardless of whether or not safer tank cars are possible in the future, trains and tankers will continue coming off the tracks.

Here are the causes of documented derailments since 2013:

- **Mechanical Failure:** Wheels and axles broke, causing cars to derail & split open.
- **Brake Malfunction:** Emergency brakes engaged, causing trains to stop too sharply then derail.
- **Broken Rails:** Aging rails caused trains to jump their tracks.
- **Rails Failing Due To The Weight Of Oil Trains:** The weight and movement of tankers exert destructive forces on the rails.
- **Rails Warped By Heat:** High temperatures caused rails to bend and trains to derail.
- **Improper Designs:** Tracks were "not up to standard" for contemporary trains; the trains derailed.
- **Theft:** Parts of rails were stolen or vandalized. Trains came through and went off the tracks.
- **Terrorism:** Terrorists plotted to derail trains (e.g., an al-Qaeda plot was foiled 2 years ago in Canada).
- **Other Trains Derail:** A train other than the crude oil carrier derailed; the crude oil train crashed into it, and it derailed as well.
- **Unattended, Runaway Rail Cars:** Engineers failed to set brakes properly or brakes malfunctioned on their own, causing runaway trains to head down inclines and ultimately derail and explode.
- **Rain & Flooding:** Heavy rains and blocked waterways flooded across tracks, causing the connection with trains to be unstable, and trains derailed.
- **Heavy Winds:** Wind gusts of 60 mph or higher swept trains off their tracks.
- **And Lastly There's Human Error:** The Texas Department of Transportation stated that 21% of derailments were caused by the human factor, such as going too fast or failing to secure brakes.

Neither Phillips nor SLO County can lessen the causes of these ever-increasing derailments. Therefore, the County should not accept the risks of 500 crude oil trains arriving and departing each year.

(Hand one copy of your statement to each commissioner + three copies to the clerk)

## 42. The Derailment Of Crude Oil Rail Trains Cannot Be Prevented Or Mitigated (cont.)

<http://abcnews.go.com/International/wireStory/wheel-axle-failure-canada-train-derailment-21473121> (New Brunswick, Canada)

<http://online.wsj.com/news/articles/SB10001424052702303640604579294794222692778> (Casselton, N.D.)

<http://www.theglobeandmail.com/news/national/train-carrying-oil-and-gas-derails-blaze-prompts-evacuation-of-new-brunswick-town/article16240968/> (New Brunswick, Canada)

<http://www.edmontonsun.com/2013/10/23/evacuation-lifted-after-train-derailment-in-gainford-alberta> (Alberta, Canada)

<http://www.reuters.com/article/2013/11/13/us-oil-train-risks-analysis-idUSBRE9AC02U20131113> (Alabama)

<http://bangordailynews.com/2013/07/10/news/state/montreal-maine-and-atlantic-railways-chairman-says-brakes-on-train-in-lac-magantic-quebec-may-not-have-been-set-properly/> (Quebec)

<http://metronews.ca/news/vancouver/906627/cn-rail-says-heavy-rain-caused-train-derailment-in-vancouver-area/> (Vancouver)

<http://www.kansascity.com/2014/01/14/4750950/no-conclusions-yet-in-ntsb-report.html> (New York City)

<http://www.focus-fen.net/news/2014/01/19/324485/theft-causes-train-crash-in-west-bulgaria-roundup.html> (Bulgaria)

[http://mtstandard.com/news/state-and-regional/wind-causes-car-train-derailment-near-helena-/article\\_9850548e-7cf0-11e3-b17c-0019bb2963f4.html](http://mtstandard.com/news/state-and-regional/wind-causes-car-train-derailment-near-helena-/article_9850548e-7cf0-11e3-b17c-0019bb2963f4.html) (Helena, Montana)

<http://www.sunjournal.com/news/maine/2014/01/09/cracked-wheel-may-have-caused-new-brunswick-train/1476118> (New Brunswick, Canada)

<http://www.startribune.com/local/238370801.html> (Casselton, North Dakota)

[http://www.kpax.com/news/cause-of-superior-train-derailment-determined/#\\_](http://www.kpax.com/news/cause-of-superior-train-derailment-determined/#_) (Superior, Montana)

<http://news.nationalpost.com/2014/01/11/massive-rcmp-probe-stopped-al-qaeda-linked-conspiracy-to-derail-passenger-train-newly-released-documents/> (Ontario, Canada)

[http://journaltimes.com/news/local/coal-train-derails-in-caledonia/article\\_cf7ec014-8121-11e3-81ce-001a4bcf887a.html?comment\\_form=true](http://journaltimes.com/news/local/coal-train-derails-in-caledonia/article_cf7ec014-8121-11e3-81ce-001a4bcf887a.html?comment_form=true) (Calendonia, WI)

<http://www.nytimes.com/2014/03/01/business/rail-inspections-ramp-up-in-albany-and-buffalo.html?>

<http://www.kvia.com/news/report-details-el-paso-train-accidents-derailments-in-recent-years/25378292>

<http://thinkprogress.org/climate/2014/05/28/3442095/fossil-fuel-trains-sun-kinks-derailments/>

<http://wgno.com/2015/04/27/watch-strong-winds-knocks-over-train-in-jefferson-parish/>

<http://www.latimes.com/nation/la-na-crude-train-safety-20151007-story.html>

<http://spreadsheets.latimes.com/oil-train-crashes/>

Speaker: Sylvia Steele Williams

Hello, my name is Sylvia Ray Steele Williams. I am a pediatric nurse practitioner practicing in San Luis Obispo. My heart is for our young people. Can we even imagine what it might be like for our young people to experience a mile long oil train passing not 3 times but 6 a week times as they travel and return through the heart of Cal Poly and within feet of 3 San Luis Coastal Unified School District schools?

Since some of the major outcomes of Phillips' crude-by-rail strategy would be the visual and noise pollution it will cause in our County, I'd like to use my time to demonstrate that. Please play the video called "Crude Oil Train" – it takes 2 minutes. Thank you.

(Show 2-minute video of oil train coming through a station.)

PLANNING COMMISSION  
AGENDA ITEM: 3  
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## Public Statement to SLO County Planning Commission – February 5, 2016

My name is Joe Cooledge. I am retired and live in Nipomo. I was a chief engineer for airplane safety at The Boeing Company.

New federal safety regulations for tanker cars allow the existing, highly unsafe, cars to keep rolling for many more years.

Crude-by-rail shipments use tanker cars that were not designed to safely carry flammable liquids. There have been numerous disastrous accidents, as we have heard in this hearing. In May of last year, the US and Canadian governments finally issued new regulations for crude-by-rail. I've given a summary of the new rules to the Clerk. The new rules address tanker construction, and brakes. But, they allow the current unsafe tanker cars to continue rolling for many more years. I will explain why this is so.

Regarding the new rules for tanker construction: The worst cars, known as DOT-111s, are allowed to continue carrying crude oil until 2018.

The second worst cars, known as CPC-1232s, the type used by Phillips 66, have until 2020 or 2025 to be retired, depending on the model.

New cars, built to DOT-117, will have higher standards. However, tank car manufacturers have said it's unreasonable to transition to the new cars in less than ten years.

Regarding the new rules for brakes: Cars are required to have electronically controlled pneumatic brakes by 2021 – that's five years away. This will cost about \$10,000 per car. The industry has responded that this technology is unreliable and unnecessary. The US Transportation Secretary has said that he anticipates lawsuits from industry, which could further delay tanker car safety improvements.

Among the many elected officials that are concerned about tanker safety as we heard yesterday, widely respected U.S. Senator Maria Cantwell of Washington State said, of the new rules: Quote "(They do) nothing to address explosive volatility, very little to reduce the threat of rail car punctures, and (are) too slow on the removal of the most dangerous cars. It's more of a status quo rule." Endquote.

Assuming that Phillips and Union Pacific RR comply with the new rules, this would mean continued operation with unsafe cars for many years, which is an unacceptable safety risk whether it's five trains per week, or three.

I will close by noting that a recent front page article in the Tribune reported that of 24,500 EIR comment letters, only 150 - less than one percent - are in favor of the rail project. This is a virtually unanimous 99-plus percent public opposition. And the speakers in this hearing are demonstrating overwhelming public opposition. This is a good time for all of us to remember that our county government and its agencies exist to serve the people. And the people are speaking with a strong, clear voice: Do not approve this project.

PLANNING COMMISSION

### References:

[www.mcclatchydc.com/2014/01/27/215650/railroad-tank-car-safety-woes.html](http://www.mcclatchydc.com/2014/01/27/215650/railroad-tank-car-safety-woes.html)

[www.nytimes.com/2015/05/02/business/energy-environment/us-sets-new-rules-for-oil-shipments-by-rail.html?\\_r=0](http://www.nytimes.com/2015/05/02/business/energy-environment/us-sets-new-rules-for-oil-shipments-by-rail.html?_r=0)

[www.dot.gov/mission/safety/rail-rule-summary](http://www.dot.gov/mission/safety/rail-rule-summary)

[www.nbcnews.com/news/us-news/new-federal-rules-aim-stop-fiery-oil-train-crashes-n352221](http://www.nbcnews.com/news/us-news/new-federal-rules-aim-stop-fiery-oil-train-crashes-n352221)

[www.railwayage.com/index.php/regulatory/dot-117-tank-car-rule-debuts-with-some-controversy.html?channel=40](http://www.railwayage.com/index.php/regulatory/dot-117-tank-car-rule-debuts-with-some-controversy.html?channel=40)

[www.wsj.com/articles/rail-executive-blasts-oil-train-rules-1430860808](http://www.wsj.com/articles/rail-executive-blasts-oil-train-rules-1430860808)

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## Rule Summary: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains

Below is a summary of the key provisions contained in the May 1, 2015 Final Rule, "Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains," issued by the Pipeline and Hazardous Materials Safety Administration and the Federal Railroad Administration.

### Scope of Rulemaking

- Unless stated otherwise, the rule applies to "High-hazard flammable trains" (HHFT) which means "a continuous block of 20 or more tank cars loaded with a flammable liquid or 35 or more tank cars loaded with a flammable liquid dispersed through a train."

### Enhanced Braking

- Require HHFTs to have in place a functioning two-way end-of-train (EOT) device or a distributive power (DP) braking system.
- Require any high-hazard flammable unit train (HHFUT) —a train comprised of 70 or more loaded tank cars containing Class 3 flammable liquids traveling at greater than 30 mph— transporting at least one packing group I flammable liquid be operated with an electronically controlled pneumatic (ECP) braking system by January 1, 2021.
- Require all other HHFUTs be operated with an ECP braking system by May 1, 2023.

### Enhanced Standards for New and Existing Tank Cars Used in HHFTs

- New tank cars constructed after October 1, 2015 are required to meet enhanced DOT Specification 117 design or performance criteria for use in an HHFT.
- Existing tank cars must be retrofitted in accordance with the DOT-prescribed retrofit design or performance standard for use in an HHFT.
- Retrofits must be completed based on a prescriptive retrofit schedule. The retrofit timeline focuses on two risk factors, the packing group and differing types of DOT-111 and CPC-1232 tank car.
- A retrofit reporting requirement is triggered if consignees owning or leasing tank cars covered under this rulemaking do not meet the initial retrofit milestone.

## **Reduced Operating Speeds**

- Restrict all HHFTs to 50-mph in all areas.
- Require HHFTs that contain any tank cars not meeting the enhanced tank car standards required by this rule operate at a 40-mph speed restriction in high-threat urban areas defined the Transportation Security Administration's regulations at 49 CFR 1580.3.

## **More Accurate Classification of Unrefined Petroleum-Based Products**

- Document sampling and testing program for all unrefined petroleum-based products, such as crude oil.
- Certify that programs are in place, document the testing and sampling program outcomes, and make information available to DOT personnel upon request.

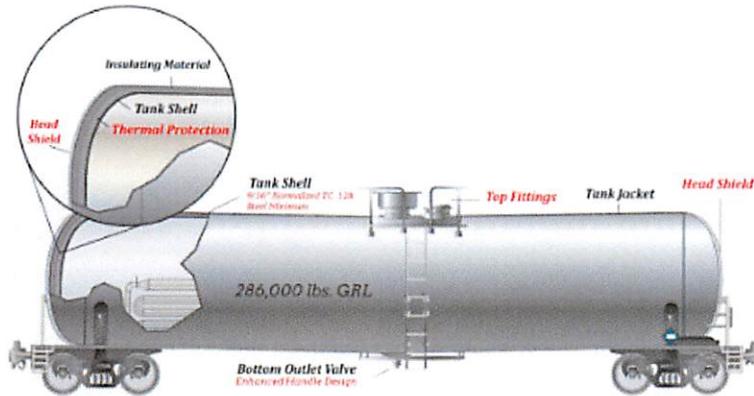
## **Rail routing - Risk Assessment**

- Railroads operating HHFTs would be required to perform a routing analysis that considers, at a minimum, 27 safety and security factors and select a route based on its findings. These planning requirements are prescribed in 49 CFR § 172.820.

## **Rail routing – Information Access**

Ensures that railroads notify State and/or regional fusion centers, and that State, local and tribal officials who contact a railroad to discuss routing decisions are provided appropriate contact information for the railroad in order to request information related to the routing of hazardous materials through their jurisdictions.

## DOT 117 Specification Car



Safety enhancements of DOT Specification 117 Tank Car:

- Full-height 1/2 inch thick head shield
- Tank shell thickness increased to 9/16 inch minimum TC-128 Grade B, normalized steel
- Thermal protection
- Minimum 11 gauge jacket
- Top fittings protection
- Enhanced bottom outlet handle design to prevent unintended actuation during a train accident

### Timeline for the Retrofit of Affected Tank Cars for Use in North American HHFTs

Tank Car Type / Service	US Retrofit Deadline*	Tank Car Type / Service	TC Retrofit Deadline
Non Jacketed DOT-111 tank cars in PG I service	(January 1, 2017) <sup>[1]</sup> January 1, 2018	Non Jacketed DOT-111 tank cars in Crude Oil service	May 1, 2017
Jacketed DOT-111 tank cars in PG I	March 1, 2018	Jacketed DOT-111 tank cars in Crude Oil service	March 1, 2018
Non Jacketed CPC-1232 tank cars in PG I service	April 1, 2020	Non Jacketed CPC-1232 tank cars in Crude Oil service	April 1, 2020
Non Jacketed DOT-111 tank cars in PG II service	May 1, 2023	Non Jacketed DOT-111 tank cars in Ethanol service	May 1, 2023
Jacketed DOT-111 tank cars in PG II service	May 1, 2023	Jacketed DOT-111 tank cars in Ethanol service	May 1, 2023
Non Jacketed CPC-1232 tank cars in PG II service	July 1, 2023	Non Jacketed CPC-1232 tank cars in Ethanol service	July 1, 2023
Jacketed CPC-1232 tank cars in PG I and PG II service and all remaining tank cars carrying PG III materials in an HHFT (pressure relief valve and valve handles).	May 1, 2025	Jacketed CPC-1232 tank cars in in Crude and Ethanol service and all remaining tank cars carrying PG III materials in an HHFT (pressure relief valve and valve handles).	May 1, 2025

<sup>[1]</sup>The January 1, 2017 date would trigger a reporting requirement, and shippers would have to report to DOT the number of tank cars that they own or lease that have been retrofitted, and the number that have not yet been retrofitted.

Associated Students, Inc.  
California Polytechnic State University  
San Luis Obispo

Resolution # 16-02

RESOLUTION TO OPPOSE THE PHILLIPS 66 COMPANY RAIL SPUR  
EXTENSION PROJECT

- WHEREAS: The Associated Students, Inc. (ASI) Board of Directors is the official voice of Cal Poly students, and,
- WHEREAS: The ASI Board of Directors expresses concern on behalf of the students and acts as the representative body within the California State University system to the San Luis Obispo community as a whole, and,
- WHEREAS: The proposed Phillips 66 rail spur project permit is discretionary and input from the community is taken into account when the San Luis Obispo County Planning Commission and San Luis Obispo County Board of Supervisors deliberate on this type of project, and,
- WHEREAS: The proposed Phillips 66 rail spur project will allow the construction of a rail spur at the Phillips 66 Nipomo Mesa facility that will allow trains to exit the main rail line and unload one train per day, and,
- WHEREAS: The proposed Phillips 66 rail spur project will allow the transit of five new oil trains per week to travel to the Phillips 66 Nipomo Mesa facility to process crude oil from North Dakota and Alberta, Canada, and,
- WHEREAS: The proposed project uses a source of cheap crude oil that releases more greenhouse gasses when refined and is more volatile and dangerous to transport than conventional crude oil, and,
- WHEREAS: The rail line that passes through the Cal Poly campus and within 500 feet of classrooms will be utilized by this project, and,
- WHEREAS: The U.S. Department of Transportation (DOT) evacuation zone in an oil train derailment is one-half mile and the potential impact zone encompasses campus, while 95,000 residents of San Luis Obispo County live in this potential impact zone, and,
- WHEREAS: The Final Environmental Impact Report (FEIR) identifies 11 Class 1 impacts along the train route. Class 1 impacts are those that are significant, adverse and unavoidable, that cannot be mitigated below significant levels, and,
- WHEREAS: The increase in train transit will raise the level of air pollution and particulate matter beyond San Luis Obispo Air Pollution Control District air quality standards, and,
- WHEREAS: The direct impacts to Cal Poly students of decreased air quality include numerous health risks, and,
- WHEREAS: Other risks identified by local agencies and the City of San Luis Obispo include hazards associated with possible train derailment such as fires and explosions, posing an unnecessary risk to student's health and safety, and,

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WHEREAS: The impacts of the project will extend through populated areas from Alberta, Canada through the states of Oregon, Washington, California, including our community, and,

WHEREAS: The proposal has already been officially opposed by the city of San Luis Obispo, as well as by 30 California cities, counties and school districts along the rail line, whom we support in their efforts to protect the welfare of all university, city, county and state residents.

THEREFORE  
BE IT

RESOLVED: The Associated Students, Inc. (ASI) Board of Director opposes the Phillips 66 company rail spur extension project due to the negative effects on student health and safety, and encourages the San Luis Obispo County Planning Commission to reject this proposal.

FURTHERMORE  
BE IT

RESOLVED: This resolution will be sent to President Armstrong, Vice President of Student Affairs Keith Humphrey, ASI Executive Director Marcy Maloney, the San Luis Obispo County Planning Commission, and the San Luis Obispo County Board of Supervisors.

Certified as the true and correct copy,  
in witness thereof, I have set my hand  
and Seal of the San Luis Obispo Cal  
Poly Associated Students, Inc. this  
4 day of February, 2016.

ADOPTED at the regular meeting of  
the Board of Directors at San Luis  
Obispo Cal Poly Associated Students,  
Inc. this 4 day of February 2016.

Attest:  
ASI Secretary



Signed:

ASI Chair of the Board

Signed:

ASI President



Authored by: Kyle Jordan, ASI University Union Advisory Board, College of Agriculture, Food and Environmental Science

Andrea Fieber, College of Agriculture, Food and Environmental Science

Soroush Aboutalebi, College of Agriculture, Food and Environmental Science

Sponsored by: Christopher Lopez, ASI Board of Directors, College of Liberal Arts

Nelson Lin, ASI Board of Directors, College of Engineering

## Citations

1. Phillips 66 Company Rail Spur Extension and Crude Unloading Project Final Environmental Impact Report and Vertical Coastal Access Project Assessment. (December, 2015). San Luis Obispo County Planning Commission. pg. E-5  
<http://bit.ly/20cU8BH>
2. Phillips 66 Company Rail Spur Extension and Crude Unloading Project Final Environmental Impact Report and Vertical Coastal Access Project Assessment. (December, 2015). San Luis Obispo County Planning Commission. Section 4.3.  
<http://bit.ly/20cU8BH>
3. Project Comment Letters (Post EIR Comment Period). (2015). San Luis Obispo: San Luis Obispo County Planning Commission.  
<http://bit.ly/1KpJFtu>
4. 2008 Emergency Response Guidebook. (n.d.). Retrieved January 19, 2016. <http://1.usa.gov/1Nj2xtU>
5. Operation Safe Delivery Update. (2014, July 7). Retrieved January 19, 2016. <http://1.usa.gov/1IszSMx>



## PLANNING COMMISSION APPEARANCE REQUEST FORM

The San Luis Obispo County Planning Commission Welcomes  
Your Comments for the Phillips 66 Rail Spur Hearing

In the interest of time, three (3) minutes will be reserved for your presentation. Please submit this completed form to the Clerk of the Planning Commission when it is your turn to speak. YOU MUST HAVE THIS FORM WITH YOUR NUMBER TO SPEAK, speaker numbers will be called in numerical order. Please keep apprised of the speakers/numbers as your number will be called. If you miss your opportunity to speak, you must request a new number. Please note that you will be granted one 3 minute opportunity to speak per person (we are digitally recording speakers).

Public Comment remarks should be directed to the Chairman and the Commission as a whole and not to any individual thereof. No person will be permitted to make slanderous, profane or personal remarks against any individual

NAME (print): Andrew Bear

SIGNATURE: Andrew Bear DATE: 2/4/16

### IMPORTANT INFORMATION:

- If your number is not within approximately 20 of the current speaker we ask that you wait outside of the Chambers in one of our overflow areas where the hearing will be streaming for you to view. Staff will be available in overflow areas to help with any logistical questions. The hearing room can only hold 160 people for safety.
- If you wish to submit digital information such as a PowerPoint or digital photos within your 3 minute presentation, please put a sticker with your speaker number on a flash drive and submit to the clerk when it is your turn to speak. Stickers will be available in the lobby with our staff. The flash drive will not be returned as the information will need to be retained for the record.
- Overflow viewing areas are located in the Fremont Theater which is next door to the hearing chambers, Conference Room 161/162 outside the hearing Chambers as well as the lobby area. The hearing will be streaming for viewing at these locations. The hearing can also be viewed online at <http://www.slocounty.ca.gov/planning/meetings.htm>
- If you need assistance with a language translator (Spanish) please notify one of our staff with your speaker number handy.

# Speaker Number 279