

*Via On-Line Portal*

September 12, 2018

California Air Resources Board  
1001 I Street  
Sacramento, California 95812

**Re: Southern California Gas Co. – Settlement with Public Agencies**

Dear Board Members:

We submit this letter on behalf of over 8,797 victims of the gas well blowout who object to the settlement between the public agencies and Southern California Gas Co. (“SoCalGas”). The settlement violates the California Constitution by giving priority in payment to the state agencies and blocking disclosure of information obtained by the state agencies about the gas leaks. The settlement also violates public policy by gifting money to SoCalGas that should be rightfully with the state and victims and settling without knowledge of the chemical exposures from the decades of gas leaks at Aliso Canyon.

**1. Priority for Payment of Restitution – California Constitution Article I, section 28(b)**

The settlement results in payment to government agencies *before* payments to the victims of the largest environmental crime in California history. Article I, section 28(c) gives victims of crime the right to first recovery for payment of economic losses.

*“All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be **first applied to pay the amounts ordered as restitution to the victim.**”* (Cal. Const. Article I, § 28(c) (emphasis added).)

The victims of this crime sought at the time of the criminal sentencing and now again seek to have the California Attorney General protect their right to priority in the payment. If this settlement is approved, the Attorney General and the State of California will be depriving the victims of their right to due process and priority payment. The California Air Resources Board is not authorized to enter contracts that circumvent the constitutional rights of victims and create an early payout to government agencies at the expense of the victims.

To make matters worse, the settlement includes a restitution payment that would be controlled by SoCalGas for its bio-methane development. SoCalGas would be authorized to spend money on its long-standing business operations *before* any of the victims recover their economic losses from the leak. Favoring SoCalGas – over the victims – deprives residents of Porter Ranch of their constitutional rights.

SoCalGas admits it intends to claim the methane mitigation payments as restitution. (See [Proposed] Consent Decree at 23:11-20.) This is done to create a tax deduction and avoid

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payment of taxes. (*Cf.* 26 U.S.C. 162(f)(2)A(ii).) In other words, SoCalGas seeks to deprive victims of their rights and use these payments as tax deduction contrary to the spirit and letter of both the California Constitution and the United States Code.

**2. Access to Records including Records re Gas Composition – California Constitution Article I, section 3**

The settlement blocks disclosure of information – indeed, some of the very terms of the agreement are redacted. Equally problematic, the agreement would require the government agencies to withhold information from the public. (*See* [Proposed] Consent Decree at 26:23-27:5.) In the litigation, SoCalGas provided evidence about the chemicals that poisoned this community. As of the submission of this objection, SoCalGas and the Public Agencies failed to disclose all of the test results for all of the chemicals.

In addition to the importance of this disclosure under the Public Records Act, there is no reasonable dispute that knowledge of the gas composition is required to allow the victims to obtain proper medical care.

Thus far, the information that should be made public includes the following:

- (a) Composition of gas from all wells at Aliso Canyon** – vital information needed because the natural gas varies depending on location underground. There were leaks in at least 47 of the 115 gas storage wells. (*See, e.g.*, [Proposed] Consent Decree at 5:20-21 describing the problems in 47 wells.)
- (b) Air models showing migration of chemicals at surface from all 47 leaking wells;** and
- (c) Subsurface migration of chemicals from all 47 leaking wells.**

The victims believe the information regarding subsurface migration of the chemicals is being ignored in this settlement because there is no physical barrier that blocks toxic chemicals from going into the aquifer. As recently as 1996, a SoCalGas employee told a news reporter that water was one of the only boundaries.<sup>1</sup> Water does not contain natural gas. The public must have access to all materials regarding migration of this gas underground into the San Fernando Valley.

SoCalGas and the public agencies are also withholding emails and documents to or from the SoCalGas lobbyists and agency staff members and elected officials. Such information is subject to discovery and the Public Records Act.

Article I, section 3 of the California Constitution guarantees people “*the right to access information concerning the conduct of the people’s business.*” The California Public Records Act was enacted to safeguard the accountability of government to the public.

“Implicit in the democratic process is the notion that government should be accountable

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<sup>1</sup> (*See, e.g.*, <https://www.thefreelibrary.com/NATURAL+GAS+BY+THE+ACRE+%3A+ALISO+CANYON+SERVES+MILLIONS.-a083949587>.)

for its actions. ***In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.***” (*CBS, Inc. v. Block*, (1986) 42 Cal.3d 646, 651 (emphasis added).)

The Public Records Act was enacted to find a “workable means of minimizing secrecy in government.” (*Id.* (citations & quotations omitted).)

The information given to the government agencies during the leak (and during the litigation) should all be made public and put on a website for the community to access. Without access to this information, “there will be no method by which the public can ascertain whether the law is being properly applied or carried out in an evenhanded manner.” (*Id.* at 656.)

### **3. Gift of Public Funds to SoCalGas – California Constitution Article XVI, section 6**

The settlement purports to create a \$26.5 million methane mitigation fund – this is not a fund controlled by the state. Instead, the fund is created by and controlled by SoCalGas.

Beginning in or before 2011, SoCalGas entered agreements for its bio-gas operations. These bio-gas projects are of such importance, they are reported to SoCalGas’s shareholders and to the United States Securities and Exchange Commission. The \$26.5 million fund will pay for the SoCalGas business operations – not pay the victims.

There are no provisions that allow the State to control the funds paid to the methane mitigation project, and no ability for the State to conduct an audit of the use of these funds. The fund created for SoCalGas constitutes a gift in violation of the California Constitution, article XVI, section 6.

***“Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, . . . in aid of or to any person, association, or corporation, . . . ; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever.”***

This is particularly egregious here because SoCalGas receives benefits for its bio-gas projects ***before*** any victim of the gas blowout receives their out-of-pocket losses.<sup>2</sup>

### **4. Violation of Public Policy**

The fact that SoCalGas will uniquely receive benefits for its long-standing programs – at the expense of the victims of this crime – demonstrates that the public agencies are not acting on behalf of the people of California. Contrary to the settlement terms, the settlement violates

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<sup>2</sup> The settlement funds would also be used to pay the victims of the Exide environmental crime before the victims of the gas blowout. The attempt to put victims of one crime in front of other victims is disappointing and demonstrates this settlement agreement violates public policy.

public policy. (Cf. [Proposed] Consent Decree at 12:7-10.)

The County Department of Public Health (“DPH”), for example, is settling all claims against SoCalGas, but DPH still does not know the gas composition. In addition, one of its lawyers (from the Miller Barondess LLP law firm) sought to block the victims’ attorney from obtaining information regarding gas composition in the civil litigation. DPH appears to be politically motivated to present the appearance of representing the victims but repeatedly ignoring the science and health issues.

For example, on March 8, 2016, DPH issued a health directive to the doctors serving the victims of the leak and told the doctors to “[l]ook for alternative etiologies other than air contamination” for the headaches the victims suffered. DPH also told the doctors to “[a]void performing any toxicological tests.” *Just two days later*, the DPH learned that its own staff members became ill when interviewing residents by, among other problems, having headaches when exposed to the air in the homes. (See, e.g., <http://www.publichealth.lacounty.gov/media/docs/CASPERFinalReport.pdf> at p. 1 and 12 (“Headaches and irritation-type symptoms were also reported among interviewers conducting interviews inside the homes of residents who had not returned home from relocation and had not ventilated their homes...”).) After learning its own team members were ill, DPH failed to correct its March 8, 2016 communication. DPH – to this day – has not sent a corrected notice to the doctors treating the victims of the mistake.

DPH also failed to test all of hazardous chemicals potentially present in the natural gas stored at Aliso Canyon. There is no publicly available test data from DPH for exposure to known toxins including:

1. Radon,
2. PCB’s and
3. Formaldehyde.

SoCalGas, in fact, added **formaldehyde** to its Prop. 65 notice last month for people living near its facilities. There is nothing in the settlement to handle the health impacts from the exposure of the victims to formaldehyde, a chemical so-toxic, there is no safe level. (*Sierra Club v. Pruitt* (N.D. Cal. Feb, 16, 2018) 293 F.Supp.3d 1050, 1054.)

Indeed, by all accounts, SoCalGas knows Aliso Canyon is not safe. On May 23, 2018, the previous Vice President for Customer Solutions and Communications at SoCalGas (Lisa Alexander) was asked: “*Is it safe for people to live in Porter Ranch?*” The SoCalGas witness testified:

***“I am -- I can’t -- I’m not qualified to make a determination as to the safety there...”***

Before her deposition, Alexander told the press and public: “*I want to stress, Aliso Canyon is safe...*” (See, <http://www.latimes.com/local/lanow/la-me-ln-aliso-canyon-wells-pressure-20170911-story.html#> (last accessed on July 31, 2018).) It is disappointing to learn the public agencies seek to settle all of the claims knowing the public spokesperson for SoCalGas will *not* testify under penalty of perjury whether the facility is safe.

Finally, DPH did not conduct any bio-monitoring of the victims to determine whether these individuals had evidence of the toxic chemicals. The only medical professional in the Porter Ranch area to study the health impacts with bio-monitoring was Dr. Jeffrey Nordella. His conclusions thus far show the residents of Porter Ranch suffered from toxic chemicals exposures.

***The public agencies should not settle without an actual understanding of the gas composition and migration of the chemicals, especially given there will be future medical costs that must be paid by the city and county.***

Just this week, the public learned that first responders at ground zero on 9-11 do not have the funds needed for their health problems. (See, e.g., <https://www.nbcnews.com/storyline/9-11-anniversary/endless-attack-sick-9-11-responders-still-struggle-get-n645156>.) By failing to cover the costs and settling without knowledge of the gas composition, the state is risking the health of the entire community living near Porter Ranch.

In sum, on behalf of 8,797 victims of the gas well blowout, we object to the settlement as it constitutes an attempt to deprive these victims of their constitutional rights. We also object to the settlement with DPH as it violates public policy – leaving thousands of victims without any information being obtained by the DPH about the chemicals emitted during the leak and without protection for future medical care of victims of the leaks. The victims further object to any attempt to settle their claims (directly or indirectly) in this settlement agreement.

Sincerely,

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