

1 STATE OF CALIFORNIA
2 ENVIRONMENTAL PROTECTION AGENCY
3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL
4

5 In the Matter of:

6 SOUTHERN CALIFORNIA GAS
7 COMPANY
8 8101 SOUTH ROSEMEAD BLVD.
9 PICO RIVERA, CALIFORNIA 90660

10 EPA ID No. CAT 000 625 137
11

) HWCA Docket: 07/08-P001

) ORDER DENYING REVIEW OF
APPEAL

) California Code of
Regulations, Title 22,
Section 66271.18

12
13 **I. INTRODUCTION**

14 On July 31, 2007, the Department of Toxic Substances Control (DTSC or
15 Department) issued a Hazardous Waste Facility Permit (Permit) decision for the
16 Southern California Gas Company (SCGC) (Permittee) Pico Rivera Base Facility
17 located at 8101 South Rosemead Blvd., Pico Rivera, California (Facility). Henrietta
18 Salazar and Carlina M. Gomez (Petitioners) filed a petition for review (appeal) of the
19 Department's decision on July 30, 2007 (Petition).

20 For the reasons discussed under Section V of this Order, DTSC denies
21 Petitioners' Appeal Comment 1, concerning violations at the Facility and Appeal
22 Comment 2, regarding notification to the public. This denial constitutes DTSC's final
23 permit decision on these comments and the denial is effective on the date of mailing of
24 this Order pursuant to California Code of Regulations, title 22, section 66271.18 (d).
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26 This Order constitutes the Department's final decision on the merits of the
27 Petition. The temporary stay of the Permit pursuant to California Code of Regulations,
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1 title 22, section 66271.14 (b) (2), is hereby lifted, and the Permit is immediately and fully
2 effective and enforceable as of the date of mailing of this Order.

3 **II. JURISDICTION**

4 The Department has jurisdiction over hazardous waste facility permit appeals
5 pursuant to Health and Safety Code section 25186.1(b)(1) and California Code of
6 Regulations, title 22, section 66271.18.

7 **III. BACKGROUND**

8 **A. FACILITY DESCRIPTION AND HISTORY**

9 The Facility is a hazardous waste storage facility, occupying a 30 acre site
10 located in an area comprised of residential, commercial and industrial uses. The Facility
11 is used for storage of containers of hazardous wastes that come only from the Facility
12 and other off-site SCGC locations. A variety of wastes are stored at the Facility,
13 including solvents, paint wastes and hydrocarbon wastes. The hazardous wastes are
14 stored until they are transported to a hazardous waste treatment or disposal facility.
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16 The Facility began operations in approximately 1980. It operated under a grant
17 of interim status from 1980 to 1996. In September 1996, the Department of Health
18 Services (predecessor to DTSC) issued a hazardous waste facility permit for the
19 Facility. The Facility has been operating under the terms of the 1996 permit since that
20 time and during the pendency of this permit appeal proceeding.

21 **B. PERMIT DECISION**

22 In March 2006, the Permittee submitted its Part A and Part B applications
23 (collectively, the Application) for renewal of the Facility's permit and consequently the
24 prior permit, originally issued in 1996, was extended by operation of law pending a final
25 decision by the Department on the permit renewal Application. In February 2007, the
26 Department issued the draft permit for a 45-day public comment period. The public
27 comment period for the draft permit renewal decision originally ran from
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1 February 6, 2007 through March 23, 2007. A public hearing was held on March 8,
2 2007. The public comment period was extended to May 1, 2007 at the request of the
3 community.

4 Comments were received during the public hearing and by electronic and postal
5 mail. Approximately fourteen (14) sets of comments were received. Some commenters
6 commented verbally at the public hearing and also in writing. Some individuals also
7 filed joint comments. DTSC subsequently prepared a Response to Comments
8 document and made changes to the draft Permit. On June 25, 2007, DTSC issued the
9 final Hazardous Waste Facilities Permit renewal decision for the Facility, along with a
10 Response to Comments document that included responses to comments that were
11 received during the public comment period. DTSC also filed a Notice of Exemption for
12 this decision to comply with the California Environmental Quality Act (CEQA).
13

14 **C. PERMIT APPEAL PROCESS**

15 Pursuant to California Code of Regulations, title 22, section 66271.18(a), the
16 period for filing a petition for review (appeal) of this final Permit decision ended on July
17 30, 2007. The Petition was filed on that date. Pursuant to California Code of
18 Regulations, title 22, sections 66271.14(b)(2) and 66271.15, the Permit was stayed
19 until the Department completes its review of the appeal to determine which, if any, of
20 the issues raised in the appeal meet the criteria for review pursuant to California Code
21 of Regulations, title 22, section 66271.18.

22 **IV. STANDARD OF REVIEW**

23 California Code of Regulations, title 22, section 66271.18(a), provides that any
24 person may petition the Department for review of the final permit decision, but only with
25 respect to those conditions in the final permit decision that differ from the draft permit
26 decision. In addition, those persons who filed comments, or participated in the public
27 hearing, on a draft permit decision (during the public comment period for the draft permit
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1 decision) may petition the Department to review any other condition of the final permit
2 decision, to the extent that the issues raised in the petition for review were either: (i)
3 also raised during the public comment period for the draft permit decision, including the
4 public hearing, or (ii) were not reasonably ascertainable at the time of the public
5 comment period.

6 Section 66271.18(a) also provides, in pertinent part, that:

7 "The petition shall include a statement of the reasons supporting
8 that review, including a demonstration that any issues being raised
9 were raised during the public comment period (including any public
10 hearing) to the extent required by these regulations and when
appropriate, a showing that the condition in question is based on:

11 (1) a finding of fact or conclusion of law which is clearly
erroneous, or

12 (2) an exercise of discretion or an important policy consideration

13 which the Department should, in its discretion, review."
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15 California Code of Regulations, title 22, section 66271.12, specifies the extent to
16 which issues are required to be raised during the public comment period for a draft
17 permit decision. Specifically, this section states that "All persons, including applicants,
18 who believe any condition of a draft permit is inappropriate or that the Department's
19 tentative decision to deny an application or prepare a draft permit is inappropriate, must
20 raise all reasonably ascertainable issues and submit all reasonably available arguments
21 and factual grounds supporting their position."
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23 Ms. Salazar submitted comments on the draft permit renewal decision at the
24 public hearing on March 8, 2007. Therefore, she clearly has standing to petition for
25 review pursuant to section 66271.18(a). Evidence in the record indicates that Ms.
26 Gomez attended the public hearing on March 8, 2007, but there is no clear evidence
27 that Ms. Gomez spoke at that hearing or submitted written comments in her individual
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1 capacity.¹ Nonetheless, for purposes of this appeal, and because Ms. Salazar definitely
2 has standing, DTSC finds that the standing requirement has been met.

3
4 **V. FINDINGS**

5 DTSC has reviewed the Petition and responds below to each Appeal Comment.
6 DTSC has paraphrased and consolidated Appeal Comments for clarity and brevity.

7 **Appeal Comment 1**

8 Petitioner Salazar did not receive a complete copy of the year 2000 inspection
9 report from DTSC, even though Response to Comment 5-1 stated that all of the reports
10 she requested were e-mailed to her. The Petition disputes DTSC's Response to
11 Comment 2-3, which states that only three violations were found since 1995 and all of
12 them concerned failure to submit updated financial responsibility information in a timely
13 manner. Petitioners contend there were repeated violations from 1984 – 2006
14 regarding emergency response (the contingency plan), the training plan and records.
15 Petitioners also assert that these violations reflect a pattern of negligence and
16 disregard for public safety.
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18 **Response:**

19 The Petition does not request review of a condition of the Permit and has failed
20 to meet the burden to establish that DTSC should grant review of this issue pursuant to
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25 ¹ The Petition includes a letter dated March 23, 2007 with the names of the Petitioners typed at the
26 bottom of the letter. DTSC has no record of receiving the March 23, 2007 letter either at the public
27 hearing or at DTSC's offices until on or about August 1, 2007, which was after the close of the public
28 comment period (May 1, 2007). The Petition alleges that Petitioners never received a response from
DTSC to the March 23, 2007 letter. The March 23, 2007 letter states: "Please accept the proceeding as
an official entry into the Public Hearing comments..." The public hearing was held on March 8, 2007,
which was more than two (2) weeks before the date of the March 23, 2007 letter.

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1 the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For
2 this reason, DTSC denies review of this Appeal Comment.

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4 Nonetheless, DTSC provides the following clarifications and corrections to the
5 Response to Comments. To help correct any misunderstanding associated with
6 Comment 5-1 and Response to Comment 5-1, DTSC has provided a copy of the 2000
7 inspection report to Petitioners. Regarding Response to Comment 2-3 and Petitioners'
8 concerns about repeated violations, we have examined the inspection history of the
9 Facility for the years 1996 to 2007. The following information corrects the
10 misstatements in Response to Comment 2-3. Inspections in 1996, 1997, 2000 and
11 2003 did not identify any alleged violations. The June 2006 inspection report found
12 three (3) violations. In May 2007 DTSC identified two (2) financial responsibility
13 violations. The 2006 and 2007 violations are discussed below.

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15 The first minor violation alleged in the 2006 inspection report was for incomplete
16 information in the contingency plan. The second minor violation concerned information
17 missing from the training plan. On August 16, 2006 the Permittee certified that both of
18 these violations had been corrected and on August 21, 2006 DTSC determined that no
19 further action was needed for these violations. The third violation was alleged because
20 review of three (3) manifests indicated that the Facility in three (3) instances had
21 improperly held hazardous waste in transit for fourteen (14) days instead of the allowed
22 ten (10) days. However, the waste has already been shipped away from the Facility by
23 the time of the inspection. The Permittee also informed DTSC that it would provide
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1 better training to personnel to prevent similar delays in the future. DTSC apparently
2 chose to not pursue these violations any further.

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4 In May 2007, DTSC alleged two financial responsibility violations. The first
5 violation was that the Permittee failed to submit updated information regarding the
6 financial test within the required ninety (90) day deadline. The Permittee subsequently
7 provided the document and DTSC rescinded the alleged violation in an October 15,
8 2007 letter to the Permittee. However, DTSC also informed the Permittee that no
9 extensions would be granted in the future for a similar violation. The second alleged
10 violation was that the Permittee failed to submit a special report from an independent
11 certified public accountant containing a statement required by DTSC's regulations.
12 DTSC's October 15, 2007 letter informed the Permittee that DTSC is working with the
13 entire industry, including the Permittee, to resolve the same issue and DTSC has
14 granted the Permittee an extension of time to come into compliance, subject to a sixty
15 (60) day notice of termination. DTSC is currently reevaluating this particular regulatory
16 requirement on a statewide basis and once a conclusion is reached, the Permittee and
17 other owner/operators will have to comply with the applicable requirement that DTSC
18 establishes.
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22 Based on our review of the Facility's enforcement history discussed above, we
23 have not found a pattern of repeated significant violations that warrants review pursuant
24 to the criteria in California Code of Regulations, title 22, section 66271.18(a).
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1 **Appeal Comment 2**

2 The Petition a) questions the notification process and asserts that not all
3 residents and businesses in the immediate area of the Facility were notified during this
4 Permit process; b) asserts that DTSC failed to respond to comments about this issue in
5 Response to Comments 3-1 and 5-1; c) questions why more residents were notified for
6 the 1996 permit than for the 2007 Permit and why the ¼ mile radius procedure seemed
7 to result in a much more comprehensive mailing list for the 1996 permit than the 2007
8 Permit decision; d) asks why residents on streets adjacent to the Facility such as
9 Maxine and Birchleaf were not notified and why some elected officials were not notified;
10 and e) requests DTSC to review or change its policy and the process of how
11 notifications are provided to residents and businesses in the immediate area of a
12 hazardous waste facility and its policy on scheduling of public hearings, taking into
13 account holidays and other major events in a community.
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17 **Response:**

18 The Petition does not request review of a condition of the permit and has failed to
19 meet the burden to establish that DTSC should grant review of this issue pursuant to
20 the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For
21 this reason, DTSC denies review of this Appeal Comment.
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23 DTSC notes that although the Petition raises concerns about mailed notices, the
24 Petition does not assert that the public notice process resulted in any conditions within
25 the Permit that should be reviewed or rescinded. Further, the Petition does not request
26 that the entire Permit be rescinded based on public notice issues. Additionally, the
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1 Petition does not claim that DTSC failed to meet the regulatory requirements for public
2 notice contained in California Code of Regulations, title 22, section 66271.9. For this
3 reason, DTSC denies review of Appeal Comment 2.
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5 We also note that the public comments and the Petition focus on potential flaws
6 in the mailing process, but mailing is only one of the techniques that DTSC used to
7 reach out to the public about this Permit. For example, DTSC also published notices in
8 newspapers, ran radio ads and posted notices on its website in order to notify the public
9 about the application and the draft permit. DTSC also placed important documents at
10 the local library for public review. Additionally, at the request of the community, DTSC
11 extended the closing of the public comment period from March 23, 2007 to May 1, 2007.
12 However, these other methods of providing notice do not diminish the importance of
13 mailing because we recognize that mailing is one of the most effective methods for
14 targeting specific residences and businesses located within the vicinity of a facility.
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17 Although DTSC is not granting review for Appeal Comment 2, DTSC believes
18 that the Petition and some of the public comments raised issues that should have been
19 more carefully addressed by the Hazardous Waste Management Program of DTSC in
20 the Response to Comments document. For example, Response to Comment 2-3
21 asserts that a fact sheet was mailed to all persons living within a ¼ mile radius of the
22 facility. Evidence in the record does not verify this statement and neither does the
23 Response to Comments document. Response 2-3 also states that DTSC mailed the
24 2000 inspection report to Petitioner, when evidence in the record does not clearly
25 support this claim.
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1 Omissions also occurred in Responses to Comments 3-1 and 5-1. The first part
2 of Comment 3-1 asked when the mailing list was developed and why persons were
3 apparently missing from the list. No response was provided in Response to Comment
4 3-1. Comment 5-1 raised a concern that nearby residents had not received notice
5 about the public hearing. No response was provided to this comment either.
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7 Also, some of the Responses to Comments may not be consistent. Although
8 Response to Comment 2-3 states that DTSC mailed fact sheets to all persons living
9 within a ¼ mile radius of the Facility, Response to Comment 6-4 states that DTSC only
10 sent 81 fact sheets to residents. It seems there would be more than 81 residents living
11 within a ¼ mile radius of the Facility. It is also not clear that any nearby businesses
12 were notified. We hereby recommend that DTSC's Hazardous Waste Management and
13 Public Participation Programs review the processes and procedures used to develop
14 mailing lists and to make sure they meet both the applicable regulatory requirements
15 and the Department's stated public participation goals.
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18 The Petition also requested DTSC to review its policy about scheduling public
19 hearings in relationship to holidays and other major events happening in a community.
20 We are forwarding this request to our Public Participation Program. We agree that it is
21 important for DTSC to be sensitive to these scheduling issues when reasonably
22 possible. We hereby recommend that DTSC's Hazardous Waste Management and
23 Public Participation Programs review DTSC's policy on scheduling public hearings and
24 determine if it should be revised or enhanced to ensure that public hearings are
25 scheduled to meet DTSC's public participation goals.
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1 Finally, we hereby recommend that in the future, DTSC more clearly respond to
2 all comments that are filed within required deadlines. This will provide important
3 information to the public and could reduce the likelihood of appeals based on
4 allegations of incomplete Response to Comments documents.
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6 **Additional Issue**

7 A copy of a 1996 agreement between the Permittee and the City of Pico Rivera
8 was enclosed with the Petition. DTSC has reviewed the agreement and Section 8 of
9 the agreement seems to indicate that the agreement has expired or will expire when
10 and if the Permittee is no longer operating the Facility pursuant to the 1996 permit.
11 Thus, it is not relevant for the 2007 Permit decision.
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13 **VI. ORDER**

14 **Appeal Comment 1**

15 For the reasons set forth above, the Department has determined, with respect to
16 Appeal Comment 1, the Petition has failed to demonstrate that the issues raised in this
17 Appeal Comment meet the criteria for review. Therefore, the Department is denying
18 further review of Appeal Comment 1. This Order constitutes the Department's final
19 decision on the merits of Appeal Comment 1.
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21 **Appeal Comment 2**

22 For the reasons set forth above, the Department has determined, with respect to
23 Appeal Comment 2, the Petition has failed to demonstrate that the issues raised in this
24 Appeal Comment meet the criteria for review. Therefore, the Department is denying
25 further review of Appeal Comment 2. This Order constitutes the Department's final
26 decision on the merits of Appeal Comment 2.
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