

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAFETY DIVISION
UTILITIES SAFETY BRANCH

RESOLUTION SU-24
December 17, 1993

R E S O L U T I O N

RESOLUTION SU-24, ESTABLISHES CITATION PROCEDURES FOR THE ENFORCEMENT OF THE GAS SAFETY REGULATION IN MOBILEHOME PARKS BY THE COMMISSION SAFETY DIVISION STAFF, PURSUANT TO PUBLIC UTILITIES CODE SECTIONS 4351-4361.

SUMMARY

1. The Utilities Safety Branch Staff (staff) requests authorization to adopt enforcement procedures, which are designed to implement and to ensure compliance with the Public Utilities (PU) Code Sections 4351-4361, for the Commission's mobilehome park (MHP) gas safety program.
2. The proposed procedures establish citation procedures and penalty amounts applicable to MHP operators (operators) for failure to comply with Federal Pipeline Safety Regulations in Title 49 Code of Federal Regulations (CFR) Parts 190, 191, and 192, and Commission directives under General Order 112-D.
3. This Resolution adopts the proposed citation procedures and penalties developed by the Utilities Safety Branch of the Safety Division and directs the Safety Division to implement the procedures and program described herein.

BACKGROUND

1. In September 1990, legislation was enacted which created authority for the Commission to establish a gas safety inspection and enforcement program for MHPs with master-metered gas distribution systems (Stats. 1990, ch.1601 (SB 2647) and ch. 1630 (AB 3327), Public Utilities Code sections 4351-4361). The legislation was enacted to ensure that operators within California comply with federal pipeline safety standards, and to

additional legislation was enacted to provide the Commission staff with authority to issue citations in enforcing the program (Stats. 1992, ch. 817 (SB 1962) (Attachment A).

2. In order to comply with SB 1962, Safety Division proposes that the Commission adopt enforcement procedures that provide it with the means to dispose of the following violations:

- a) Obstruction by a MHP operator of the Commission staff's right to entry (PU Code section 4353);
- b) Failure by a MHP operator to file an Annual Report (PU Code section 4354);
- c) Failure by a MHP operator to repair safety hazards in distribution systems (PU Code section 4356);
- d) Failure by a MHP operator to comply with Commission staff directives (PU Code section 4356);
- e) Falsifying documents (PU Code section 4359).

Any operator who commits any of these violations shall be subject to a citation with civil penalties of not more than \$1,000 for each day that the violation continues, but not to exceed \$200,000 for a single violation or related series of violations, as permitted by PU Code section 4357.

3. In determining penalties, the Commission staff is authorized to consider the gravity of the violation, size of the MHP, good faith of the operator in attempting to achieve compliance, degree of culpability, history of violations, and the effect of the penalty on the operator.

NOTICE,

1. On August 11, 1993, staff mailed over 2900 letters to mobilehome park operators and another 155 letters to other interested parties informing them of staff's intention to adopt, by way of a Commission resolution, the proposed procedures manual and citation form applicable to all MHPs with master-metered gas distribution systems. Interested parties were provided with an opportunity to review and protest the proposed manual and citation form by either going into the Commission's San Francisco or Los Angeles offices to review them, or by requesting a copy through the mail. All protests were due on or before September 30, 1993.

2. Staff received 231 requests for copies of the proposed manual and citation form. There were no requests to personally review the manual or citation forms.

Protest

1 The federal standards are established in the National Gas Pipeline Safety Act, Title 49, Code of Federal Regulations, Parts 190, 191, and 192.

1. At the close of the protest period, staff received three protests to its proposal. The first protest was from Western Mobilehome Association (WMA). WMA protested **six** areas of the procedures manual and citation form. On October 19, 1993, staff and WMA discussed these comments. The first item raised by WMA was found in Chapter 1, Types of Violations, Category IV, Non-Compliance With Other Commission Directives, and Category V, Falsifying Documents. Although WMA argued that the legislation did not authorize these categories, staff believes there is implied statutory authority to require MHP operators to comply with staff's directives and provide staff with accurate and truthful information.

WMA also requested that staff add to the procedures manual PU Code section 4354.5(c) which provides that no penalty shall be imposed upon a subsequent operator who has not received the information and records from the transferring operator upon conveyance of the park. Staff agreed to add this language to the procedures manual along with the statement that PU Code section 4354.5(c) does not preclude a transferee operator from creating and generating the information and records requested by staff.

The other issues raised by WMA have been discussed and clarified by staff during its conversation with WMA.

2. The second party to protest staff's procedures manual and citation form was Southern California Gas Company (SoCalGas). SoCalGas raised five issues of concern. On October 20, 1993, staff discussed these concerns with SoCalGas. One concern involved the termination of service to the MHP operator. SoCalGas requested that if staff directs a utility to terminate service to the MHP, then it should be done in writing and should include the reason for termination. Staff agreed that if any utility is requested to terminate service to a MHP, the staff inspector will send, by facsimile, a letter to the utility requesting such action.

The second issue raised by SoCalGas was whether gas service terminated due to unsafe conditions could be reinstated if the condition was corrected even though the fine was not paid. Staff agreed that restoration of gas service to the mobilehome tenants should not be denied even though the owner has not paid the fine.

The third issue raised by SoCalGas was whether the procedures manual should require the MHP operator to ensure that a map of the gas distribution system be available on site at all times. Although a map of the gas distribution system is one of the documents required to be available for inspection by staff, (PU Code section 4354.5(a)(1)), this map is not required to be on site at all times as it is only needed for gas leak surveys. In an emergency which requires the utilities and/or fire departments to shut down gas service, a map of the gas distribution system

does not need to be on site as the utilities and/or fire departments can shut down gas service at the master meter without a map.

The other issues raised by SoCalGas were discussed and SoCalGas' concerns have been satisfied.

3. The last comment received by staff was from Pacifica Realty Inc. This company opposed the gas safety enforcement program and felt Staff's efforts was only creating new unnecessary jobs.

DISCUSSION

1. The Commission's gas safety inspection and enforcement program has been in effect since July 1991 operating under the provisions of PU Code sections 4351-4361. During the past two years, staff has found that the majority of operators have been cooperative in complying with staff's directives. However, a few of the operators have refused to comply with staff directives. At present, staff pursues compliance via telephonic notices, certified letters, and/or re-inspections, when an operator fails to comply. However, no guidelines exist to cite or penalize operators who opt to ignore the Commission staff directives and safety rules and regulations. The proposed procedure will provide a venue for staff to issue citations against offenders as an enforcement procedure prior to commencement of a formal investigation.

2. The following is a brief summary of the procedures to be used in enforcing the various violations:

A. Willful Obstruction of Commission Staff's Right of Entry

These citation procedures will apply when an operator willfully obstructs staff from gaining access to the premises in order to conduct a safety inspection of the MHP, as provided for in PU Code section 4353(f). If the operator will not pay the fine, due process will be afforded by offering the operator options of either contesting the citation or by requesting an informal conference with staff or be subject to a formal proceeding.

B. Failure to File an Annual Report

As required by PU Code section 4354, any MHP operator who fails to comply with staff's request to file an annual report will be issued a citation which will include a fine. The operator may choose not to contest the citation by paying the fine assessed and filing an annual report. If the operator challenges the citation, he/she will have an opportunity to request an informal

conference with staff as provided in PU Code §4357(b)(3), or be subject to a formal proceeding.

C. Failure to Repair Safety Hazards in Distribution Systems

Upon discovery of violations which constitute significant or immediate danger to the health and safety of MHP residents, staff will immediately issue an inspection form indicating the violations discovered. The operator will be given 24 hours to take steps to correct the violations. If effort has not been made to comply, the citation and fine will be issued (PU Code section 4356). Due process is afforded by offering the operator options to contest the citation, by requesting an informal conference with staff as provided in PU Code section 4357(b)(3), or be subject to a formal proceeding.

D. Failure to Comply with Commission Directives

During inspection, staff may discover violations which are considered non-hazardous but may present future hazards. The operator will be provided with a written copy of the inspection report and given time to correct the violations as required by the section 4355 of the PU Code. Operators who fail to comply with the Commission directives will be cited. Due process is provided by allowing the operator the option of contesting a citation by requesting an informal conference with staff or be subject to a formal hearing.

E. Falsifying Documents

The Commission may adopt rules and orders to carry out inspections of natural gas distribution systems of MHPs (PU Code section 4359). All documents submitted by an operator to the Commission must be accurate and truthful. If staff discovers that an operator has deliberately falsified documents, or did not administer his/her plan of action for correcting violations, the operator will be issued a citation for non-compliance with the Commission directives (PU Code sections 2112 and 4357(c)). Due process is afforded by permitting the operator an opportunity to be heard in a formal proceeding, initiated in accordance with PU Code section 2112.

3. Attachment B is the Commission Safety Division's Citation Procedures Manual containing the citation procedures which shall be used to analyze and determine whether a violation has occurred, and what penalty is warranted.

4. Attachment C is a sample citation form that will be utilized by the Safety Division while issuing citations.

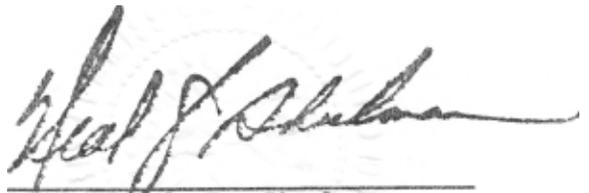
FINDINGS

1. There are currently no existing guidelines to enforce Commission directives on MHP operators.
2. Citation procedures established in the Safety Division Citation Procedures Manual are needed to ensure effective enforcement of the legislative mandate.

THEREFORE, IT IS ORDERED that:

1. The Safety Division's proposed Citation Procedures For Inspection of Natural Gas Distribution Systems of Mobilehome Parks described above is approved.
2. The Safety Division staff is authorized to utilize and implement the approved citation procedures described above, and as set out in Attachments B and C.
3. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on December 17, 1993. The following Commissioners approved it:



Neal J. Shulman
Executive Director

**DANIEL Wm. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
P. GREGORY CONLON
JESSIE J. KNIGHT, Jr.
Commissioners**