

TEXT OF REGULATIONS

California Code of Regulations
TITLE 19. Public Safety
DIVISION 1. State Fire Marshal
CHAPTER 14. Hazardous Liquid Pipeline Safety
Article 4. Pipeline Operator Drug and Alcohol Testing

Added text is shown in underline and deleted text is shown in ~~strikethrough~~

Article 4. Pipeline Operator Drug and Alcohol Testing

§ 2050. Adoption of Federal Regulations

The State Fire Marshal adopts by reference Title 49 of the Code of Federal Regulations, Part 40, ~~Sections 40.1 through 40.37 inclusive,~~ with appendices, relating to procedures for workplace drug testing programs, ~~adopted as of December 1, 1989,~~ and Part 199, ~~Sections 199.1 through 199.23 inclusive, adopted as of November 21, 1988, except for Section 199.1 (b), adopted April 13, 1989, Sections 199.3, 199.7, 199.9, 199.11, and 199.15, adopted January 17, 1990, and Section 199.1 (d), adopted December 27, 1989,~~ relating to drug and alcohol testing methods and procedures for pipeline operators.

NOTE: Authority: Sections 51010, ~~and 51011,~~ and 51018.6, Government Code. Reference: Sections 51010, ~~and 51011,~~ 51018.6, and 51018.8, Government Code; 54 Federal Register 49866, dated 12/1/89, adopting 49 C.F.R. Part 40, Sections 40.1 through 40.37, inclusive, and including Appendix A; 53 Federal Register 47096, dated 11/21/88, adopting 49 C.F.R., Part 199, Sections 199.1 through 199.23, inclusive

California Code of Regulations
TITLE 19. Public Safety
DIVISION 1. State Fire Marshal
CHAPTER 14. Hazardous Liquid Pipeline Safety
Article 6. Enforcement Proceedings

Added text is shown in underline and deleted text is shown in ~~strikethrough~~

Article 6. Enforcement Proceedings

§ 2070. Notice of Probable Violation.

~~(a) "Hearing" means an informal conference or a proceeding for oral presentations. Unless otherwise specifically prescribed in this part, the use of "hearing" is not intended to require a hearing on the record in accordance with Chapter 5, Part 1, Division 3 of the Government Code.~~

~~(b) Except as otherwise provided by this subpart, the Office of State Fire Marshal, Division of~~

~~Hazardous Liquid Pipelines Safety and Enforcement (hereinafter known as the Division) begins an enforcement proceeding by serving a notice of probable violation on a person charging him with a probable violation of the California Hazardous Liquid Pipeline Safety Act or any regulation or order issued thereunder.~~

~~(c) A notice of probable violation issued under this section shall include:~~

~~(1) Statement of the provisions of the laws, regulations or orders which the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based;~~

~~(2) Notice of response options available to the respondent under Section 2071;~~

~~(3) If a civil penalty is proposed under Section 51018.6, Government Code, the amount of the proposed civil penalty and the maximum civil penalty for which respondent is liable under law; and~~

~~(4) If a compliance order is proposed under Section 51018.8, Government Code; a statement of the remedial action being sought in the form of a proposed compliance order.~~

~~(d) The Division may amend a notice of probable violation at any time prior to issuance of a final order under Section 2073. If an amendment includes any new material allegations of fact or proposes an increased civil penalty amount or new or additional remedial action under Section 51018.8, Government Code, the respondent shall have the opportunity to respond under Section 2071.~~

~~NOTE: Authority cited: Section 51018.6, Government Code. Reference: Section 51018.6, Government Code.~~

§ 2070.1 Definitions.

(a) "Division" means the Office of the State Fire Marshal, Pipeline Safety Division.

(b) "Hearing" means an informal conference or a proceeding for oral presentations. Unless otherwise specifically prescribed in this Article, the use of "hearing" is not intended to require a hearing on the record in accordance with Chapter 4, Part 1, Division 3 of the Government Code.

(c) "Imminent hazard" means the existence of a condition relating to a pipeline facility that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury or endangerment.

(d) "Operator" means a person who owns or operates a pipeline facility.

(e) "Person" includes any individual, firm, association, organization, partnership, limited liability company, business trust, corporation, company, or public or private organization or entity of any character.

(f) "Presiding Official" for a hearing is a representative of the Division who is not engaged in any investigative or prosecutorial functions, such as the issuance of notices under this Article related to the action being heard. If the designated Presiding Official is unavailable, the State Fire Marshal may delegate the powers and duties specified in this section to another representative who is not engaged in any investigative or prosecutorial functions under this Article related to the action being heard.

(g) "Respondent" means a person or operator upon whom the Division has served an enforcement action described in this Article.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code.

§ 2070.2 Service.

(a) Each order, notice, or other document required to be served under this Article, will be served personally, by certified mail, overnight courier, or other electronic means that includes reliable acknowledgement of actual receipt.

(b) Service upon a person's duly authorized representative or agent constitutes service upon that person.

(c) Service by certified mail or overnight courier is complete upon mailing. Service by electronic transmission is complete upon transmission and acknowledgement of receipt. An official receipt for the mailing from the U.S. Postal Service or overnight courier, or other electronic transmission confirmation, constitutes prima facie evidence of service.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code

§ 2071. Response Options.

~~Within 30 days of the receipt of a notice of probable violation the respondent shall respond to the Division who issued the Notice in the following way:~~

~~(a) When the notice contains a proposed civil penalty~~

~~(1) Pay the proposed civil penalty as provided in Section 51018.6, Government Code and close the case;~~

~~(2) Submit an offer in compromise of the proposed civil penalty under paragraph (c) of this section and paragraph (a) of Section 2075;~~

~~(3) Submit written explanations, information or other materials in answer to the allegations or in mitigation of the proposed civil penalty; or~~

~~(4) Request a hearing under Section 2072.~~

~~(b) When the notice contains a proposed compliance order~~

~~(1) Agree to the proposed compliance order;~~

~~(2) Request the execution of a consent order;~~

~~(3) Object to the proposed compliance order and submit written explanations, information or other materials in answer to the allegations in the notice of probable violation; or~~

~~(4) Request a hearing under Section 2072.~~

~~(c) An offer in compromise under paragraph (a) of this section is made by submitting a check or money order for the amount offered to the Division, who forwards the offer to the State Fire Marshal, for action. If the offer in compromise is accepted by the State Fire Marshal, the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If an offer in compromise submitted under paragraph (a) of this section is rejected by the State Fire Marshal, it is returned to the respondent with written notification. Within 10 days of his receipt of such notification, the respondent shall again respond to the Division in one or more of the ways provided in paragraph (a) of this section.~~

~~(d) Failure of the respondent to respond in accordance with paragraph (a) of this section or,~~

~~when applicable, paragraph (c) of this section, constitutes a waiver of his right to contest the allegations in the notice of probable violation and authorizes the State Fire Marshal, without further notice to the respondent, to find facts to be as alleged in the notice of probable violation and to issue a final order under Section 2073.~~

~~NOTE: Authority cited: Section 51018.6, Government Code. Reference: Section 51018.6, Government Code.~~

§ 2071.1 Amendment of Plans or Procedures.

(a) The Chief of Pipeline Safety, or a designee, begins a proceeding to determine whether an operator's plans or procedures required under Title 49 Parts 195, 199, and 40, or Title 19 of the California Code of Regulations and California Government Code Sections 51010 et seq., are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice will specify the alleged inadequacies and the proposed revisions of the plans or procedures and provide an opportunity to respond. The notice will allow the operator 30 days following receipt of the notice to submit written comments or revised procedures.

(b) After considering all material presented in writing the Chief of Pipeline Safety, or a designee, determines whether the plans or procedures are inadequate. The Chief of Pipeline Safety, or a designee, issues an order directing amendment of the plans or procedures if they are inadequate, or withdraws the notice if they are not. In determining the adequacy of an operator's plans or procedures, the Chief of Pipeline Safety, or a designee, may consider:

(1) Relevant pipeline safety data;

(2) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility, and for the location of the facility;

(3) The reasonableness of the plans or procedures; and

(4) The extent to which the plans or procedures contribute to public safety.

(c) An order directing amendment of an operator's plans or procedures prescribed in this section may be in addition to, or in conjunction with, other appropriate enforcement actions prescribed in this Article.

(d) If the respondent is contesting one or more allegations in the order directing amendment, the respondent may request a hearing under Section 2072.

~~NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code~~

§ 2071.2 Warning Letters.

Upon determining that a probable violation of 49 U.S.C. 60101 et seq., 49 C.F.R. Parts 190, 195, 199, and 40, or California Government Code 51010 – et seq., or Title 19 of the California Code of Regulations, or any regulation or order issued thereunder has occurred, the State Fire Marshal, or designee, may issue a written warning notifying the operator of the probable violation and advising the operator to correct it or be subject to potential enforcement action in the future. The operator may submit a response to a warning, but is

not required to. An adjudication under this Article to determine whether a violation occurred is not conducted for warnings.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code

§ 2071.3 Notice of Probable Violation.

(a) Upon determining that a probable violation of 49 C.F.R. Parts 190, 195, 199, and 40, or California Government Code section 51010 et seq., or Title 19 of the California Code of Regulations, or any regulation or order issued thereunder has occurred, the State Fire Marshal may issue an enforcement proceeding by serving a notice of probable violation on a person or operator

(b) A notice of probable violation issued under this section shall include:

(1) Statement of the provisions of the laws, regulations or orders which the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based;

(2) Notice of response options available to the respondent under Section 2071.4;

(3) If a civil penalty is proposed under Section 2075 or Government Code Section 51018.6, the amount of the proposed civil penalty and the maximum civil penalty for which respondent is liable under law; and

(4) If a compliance order is proposed under Section 51018.8 of the Government Code, a statement of the remedial action being sought in the form of a proposed compliance order.

(c) The State Fire Marshal may amend a notice of probable violation at any time prior to issuance of a final order under Section 2073.1. If an amendment includes any new material allegations of fact or proposes an increased civil penalty amount or new or additional remedial action under Section 51018.8, Government Code, the respondent shall have the opportunity to respond under Section 2071.4.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code

§ 2071.4 Response Options.

Within 30 days of the receipt of a notice of probable violation the respondent shall respond to the Division who issued the notice in the following way:

(a) When the notice contains a proposed civil penalty:

(1) If the respondent is not contesting an allegation of probable violation, pay the proposed civil penalty as provided under Section 2075.1. The payment authorizes the State Fire Marshal to make a finding of violation and to issue a final order under Section 2073.1;

(2) Submit an offer in compromise of the proposed civil penalty under paragraph (c) of this section and paragraph (a) of Section 2075.1

If the respondent is not contesting an allegation of probable violation but wishes to submit a written explanation, information, or other materials respondent believes may warrant mitigation or elimination of the proposed civil penalty, the respondent may submit such

materials. This authorizes the State Fire Marshal to make a finding of violation and to issue a final order under Section 2073.1;

(3) If the respondent is contesting one or more allegations of probable violation but is not requesting a hearing under Section 2072, the respondent may submit a written response in answer to the allegations; or

(4) The respondent may request a hearing under Section 2072.

(b) When the notice contains a proposed compliance order:

(1) If the respondent is not contesting an allegation of probable violation, agree to the proposed compliance order. This authorizes the State Fire Marshal to make a finding of violation and to issue a final order under Section 2073.1;

(2) The respondent may request the execution of a consent order under Section 2073.2;

(3) If the respondent is contesting one or more of the allegations of probable violation or compliance terms, but is not requesting a hearing under Section 2072, the respondent may object to the proposed compliance order and submit written explanations, information, or other materials in answer to the allegations in the notice of probable violation; or

(4) The respondent may request a hearing under Section 2072.

(c) An offer in compromise under paragraph (a) of this section is made by submitting a check or money order for the amount offered to the Division, who forwards the offer to the State Fire Marshal, for action. If the offer in compromise is accepted by the State Fire Marshal, the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. Respondent waives all administrative and judicial rights and remedies upon acceptance of civil penalty payments or acceptance of an offer in compromise by the Office of the State Fire Marshal. If an offer in compromise submitted under paragraph (a) of this section is rejected by the State Fire Marshal, it is returned to the respondent with written notification. Within ten (10) days of his receipt of such notification, the respondent shall again respond to the Division in one or more of the ways provided in paragraph (a) of this section.

(d) Failure of the respondent to respond in accordance with paragraph (a) of this section or, when applicable, paragraph (b) of this section, constitutes a waiver of their right to contest the allegations in the notice of probable violation and authorizes the State Fire Marshal, without further notice to the respondent, to find facts to be as alleged in the notice of probable violation and to issue a final order under Section 2073.1.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code

§ 2072 Hearing.

(a) A request for a hearing in response to a notice of probable violation issued under Section 2070 ~~2071.3~~, or an order directing amendment under Section 2071.1, or a corrective action order issued under Section 2073.3 must be accompanied by a statement of the issues which the respondent intends to raise at the hearing. The issues may relate to the alleged violations, new information, or to the proposed compliance order or proposed civil penalty amount or to the corrective action order. A respondent's failure to specify an issue may result in waiver of his right to raise that issue at the hearing. The respondent's request may also

indicate whether or not ~~he~~ the respondent will be represented by counsel at the hearing. The respondent may withdraw a request for a hearing in writing and provide a written response.

(b) In such circumstances as deemed appropriate by the Division, and only if the respondent concurs, a telephone conference may be held in lieu of a hearing.

~~(c) If the respondent contests any of the alleged violations, if the respondent is represented by counsel or if the respondent specifically requests that an attorney conduct the hearing, the~~ The Office of State Fire Marshal shall designate a presiding official Presiding Official for the hearing. Otherwise, the hearing may be conducted by a representative of the Division.

(d) Time and place of the hearing. The Presiding Official will set the date, time and location of the hearing. To the extent practicable, the Presiding Official will accommodate the parties' schedules when setting the hearing. Reasonable notice of the hearing will be provided to all parties.

(e) Powers and duties of Presiding Official. The Presiding Official will conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of the proceeding and maintain order. The Presiding Official has all powers necessary to achieve those ends, including, but not limited to the power to:

(1) Regulate the course of the hearing and conduct of the parties and their counsel;

(2) Receive evidence and inquire into the relevant and material facts;

(3) Require the submission of documents and other information;

(4) Direct that documents or briefs relate to issues raised during the course of the hearing;

(5) Set the date for filing documents, briefs, and other items;

(6) Prepare a recommended decision; and

(7) Exercise the authority necessary to carry out the responsibilities of the Presiding Official under this Article.

(f) Pre-hearing submissions. If the Division or the respondent intends to introduce material, including records, documents, and other exhibits not already in the case file, the material must be submitted to the Presiding Official and the other party at least ten (10) days prior to the date of the hearing, unless the Presiding Official sets a different deadline or waives the deadline for good cause.

(g) Written transcripts. If either party elects to transcribe a hearing, they must make arrangements with a court reporter at their cost and submit a complete copy of the transcript to the Division for the case file. The respondent must notify the Presiding Official in advance if it intends to transcribe a hearing.

~~(h)~~ Conduct of the hearing. The hearing is conducted informally without strict adherence to rules of evidence. The respondent may submit any relevant information and material and call witnesses on his their behalf. He The respondent also may examine the evidence and witnesses against him them. No detailed record of a hearing is prepared.

(1e) At the outset of the hearing, the material in the case file pertinent to the issues to be determined is presented by the presiding official. The respondent may respond to or rebut this material.

(2f) After the presentation of the material in the case file, the respondent may offer any facts, statements, explanations, documents, testimony or other items which are relevant to the issues under consideration.

(3g) At the close of the respondent's presentation, the Presiding Official may present or allow the presentation of State Fire Marshal rebuttal information. The respondent may then respond to that information.

(4h) After the evidence in the case has been presented, the presiding official shall permit argument on the issues under consideration.

(i) Post-hearing submission. The respondent and the Division may also request an opportunity to submit further written material after the hearing for inclusion in the case file. The presiding official shall allow a reasonable time for the submission of the material and shall specify the date by which it must be submitted. If the material is not submitted within the time prescribed, the case will proceed to final action without the material.

(j) Preparation of decision. After submission of all materials during and after the hearing, the presiding official shall prepare a written recommendation as to final action in the case. This recommendation, along with any material submitted during and after the hearing, shall be included in the case file which is forwarded to the State Fire Marshal for final administrative action.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code.

§ 2073.1 Final Order.

(a) After a hearing under Section 2072 or, if no hearing has been held, after expiration of the 30-day response period prescribed in Section 2071.4, the case file of an enforcement proceeding commenced under Section ~~2070~~ 2071.3 is forwarded to the State Fire Marshal, for issuance of a final order.

(b) The case file of an enforcement proceeding commenced under Section ~~2070~~ 2071.3 includes:

- (1) The inspection reports and any other evidence of alleged violations;
- (2) A copy of the notice of probable violation issued under Section ~~2070~~ 2071.3;
- (3) Material submitted by the respondent in accord with Section ~~2070~~ 2071.4 in response to the notice of probable violation;
- (4) The Division's evaluation of response material submitted by the respondent and the Division's recommendation for final action to be taken under this section; and
- (5) In cases involving a Section 2072 hearing, any material submitted during and after the hearing and the hearing officer's recommendation for final action to be taken under this section.

(c) Based on review of a case file described in paragraph (b) of this section, the State Fire Marshal shall issue a final order that includes:

- (1) A statement of findings and determinations on all material issues, including a determination as to whether each alleged violation has been proved;
- (2) If a civil penalty is assessed, the amount of the penalty and the procedures for payment of the penalty, provided that the assessed civil penalty may not exceed the penalty proposed in the notice of probable violation; and
- (3) If a compliance order is issued, a statement of the actions required to be taken by the

respondent and the time by which such actions must be accomplished.

(d) Except as provided by Section 2074, an order issued under this section regarding an enforcement proceeding is considered final administrative action on that enforcement proceeding.

(e) The Office of the State Fire Marshal shall issue a final order under this section within 45 days of receipt of the case file. In cases where delay beyond that period is expected, notice of that fact and the date by which it is expected that action will be taken shall be issued to the respondent.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code.

§ 2073.2 Consent Order.

(a) At any time prior to the issuance of a compliance order under Section 2071.3, a corrective action order under Section 2073.3, or an immediate closure order under Section 2073.5, the State Fire Marshal, or designee, and the respondent may agree to resolve the case by execution of a consent agreement and order, which may be jointly executed by the parties and issued by the State Fire Marshal. Upon execution, the consent order is considered a final order under Section 2073.1.

(b) A consent order executed under paragraph (a) of this section shall include:

(1) An admission by the respondent of all jurisdictional facts;

(2) An express waiver of further procedural steps and of all right to seek judicial review or otherwise challenge or contest the validity of that order;

(3) An acknowledgement that the notice of probable violation may be used to construe the terms of the consent order; and

(4) A statement of the actions required of the respondent and the time by which such actions shall be accomplished.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code

§ 2073.3 Corrective Action Orders.

(a) Generally. Except as provided by paragraph (b) of this section, if the State Fire Marshal finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section, a particular pipeline facility is or would be hazardous to life, property, or the environment, the State Fire Marshal may issue an order pursuant to this section requiring the operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.

(b) Waiver of notice and expedited review. The State Fire Marshal may waive the requirement for notice and opportunity for hearing under paragraph (a) of this section before issuing an order whenever the State Fire Marshal determines that the failure to do so would result in the likelihood of serious harm to life, property, or the environment. When an order is

issued under this paragraph, a respondent that contests the order may obtain expedited review of the order either by answering in writing to the order within ten (10) days of receipt or requesting a hearing under Section 2072 to be held as soon as practicable in accordance with paragraph (c)(2) of this section. For purposes of this section, the term "expedited review" is defined as the process for making a prompt determination of whether the order should remain in effect or be amended or terminated. The expedited review of an order issued under this paragraph will be complete upon issuance of such determination.

(c) Notice and hearing:

(1) Written notice that the State Fire Marshal intends to issue an order under this section will be served upon the owner or operator of an alleged hazardous facility in accordance with Section 2070.2. The notice must allege the existence of a hazardous facility and state the facts and circumstances supporting the issuance of a corrective action order. The notice must provide the owner or operator with an opportunity to respond within ten (10) days of receipt.

(2) An owner or operator that elects to exercise its opportunity for a hearing under this section must notify the State Fire Marshal of that election in writing within ten (10) days of receipt of the notice provided under paragraph (c)(1) of this section, or the order under paragraph (b) of this section when applicable. The absence of such written notification waives an owner or operator's opportunity for a hearing.

(3) At any time after issuance of a notice or order under this section, the respondent may request a copy of the case file as set forth in Section 2073.1.

(4) A hearing under this section is conducted pursuant to Section 2072. The hearing should be held within 15 days of receipt of the respondent's request for a hearing.

(5) After conclusion of a hearing under this section, the Presiding Official submits a recommended decision to the State Fire Marshal as to whether or not the facility is or would be hazardous to life, property, or the environment, and if necessary, requiring expeditious corrective action. If a notice or order is contested in writing without a hearing, an attorney from the Office of Chief Counsel prepares the recommended decision. The recommended decision should be submitted to the State Fire Marshal within five (5) business days after conclusion of the hearing or after receipt of the respondent's written objection if no hearing is held. Upon receipt of the recommendation, the State Fire Marshal will proceed in accordance with paragraphs (d) through (h) of this section. If the State Fire Marshal finds the facility is or would be hazardous to life, property, or the environment, the State Fire Marshal issues a corrective action order in accordance with this section, or confirms (or amends) the corrective action order issued under paragraph (b) of this section. If the State Fire Marshal does not find the facility is or would be hazardous to life, property, or the environment, the State Fire Marshal withdraws the notice or terminates the order issued under paragraph (b) of this section, and promptly notifies the operator in writing by service as prescribed in Section 2070.2.

(d) The State Fire Marshal may find a pipeline facility to be hazardous under paragraph (a) of this section:

(1) If under the facts and circumstances the State Fire Marshal determines the particular facility is hazardous to life, property, or the environment; or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the State Fire Marshal determines is hazardous to life, property, or the environment, unless the operator involved demonstrates to the satisfaction of the State Fire Marshal that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous.

(e) In making a determination under paragraph (d) of this section, the State Fire Marshal shall consider, if relevant:

(1) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;

(2) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

(3) The characteristics of the geographical areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas; and

(4) Such other factors as the State Fire Marshal may consider appropriate.

(f) A corrective action order shall contain the following information:

(1) A finding that the pipeline facility is or would be hazardous to life, property, or the environment.

(2) The relevant facts which form the basis of that finding.

(3) The legal basis for the order.

(4) The nature and description of any particular corrective action required of the respondent.

(5) The date by which the required corrective action must be taken or completed and, where appropriate, the duration of the order.

(6) If the opportunity for a hearing was waived pursuant to paragraph (b) of this section, a statement that an opportunity for a hearing will be available at a particular time and location after issuance of the order.

(g) The State Fire Marshal will terminate a corrective action order whenever the State Fire Marshal determines that the facility is no longer hazardous to life, property, or the environment. If appropriate, however, a notice of probable violation may be issued under Section 2071.3.

(h) At any time after a corrective action order issued under this section has become effective, the State Fire Marshal may request the Attorney General to bring an action for appropriate relief in accordance with Section 2073.4.

(i) Upon petition by the Attorney General, California State Courts shall have jurisdiction to enforce orders issued under this section by appropriate means.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code

§ 2073.4 Civil Actions Generally.

Whenever it appears to the State Fire Marshal that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 et seq., 49 C.F.R. Parts 190, 195, 199, and 40, or California Government Code section 51010 et seq., or Title 19 of the California Code, the State Fire Marshal, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate California State Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and civil penalties as provided under California Government Code Sections 51018.6, 51018.7, or 51018.8.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code

§ 2073.5 Immediate Closure Orders.

(a) General. The State Fire Marshal may immediately order any pipeline closed, under Section 13107.5, Health and Safety Code, when it is determined to be necessary to do so in the interests of public safety.

(b) When the State Fire Marshal determines, as a result of an investigation involving a break, explosion, or fire involving a pipeline, that an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard, as defined in Section 2070.1, the State Fire Marshal may issue or impose an immediate closure order, without advance notice or an opportunity for a hearing.

(c) The pipeline shall remain closed until it is determined that operations may be resumed with safety or until any discovered safety defect has been remedied or repaired.

(d) The order will contain a written description of:

(1) The violation, condition, or practice that constitutes or is causing the imminent hazard;

(2) Those entities subject to the order;

(3) The restrictions, prohibitions, or safety measures imposed;

(4) The standards and procedures for obtaining relief from the order;

(5) How the order is tailored to abate the imminent hazard and the reasons the authorities under Section 2073.3 are insufficient to do so; and

(6) How the considerations listed in paragraph (d) of this section were taken into account.

(e) Consultation. In considering the factors under paragraph (e) of this section, the State Fire Marshal may consult, as the State Fire Marshal determines appropriate, with Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.

(f) Considerations. Prior to issuing an immediate closure order, the State Fire Marshal shall consider the following, as appropriate:

(1) The impact of the immediate closure order on public health and safety;

(2) The impact, if any, of the immediate closure order on the State economy or security;

(3) The impact of the immediate closure order on the ability of owners and operators of pipeline facilities to maintain reliability and continuity of service to customers; and

(4) The results of any consultations with appropriate Federal agencies, State agencies, and

other entities knowledgeable in pipeline safety or operations.

(g) Service. The State Fire Marshal will provide service of immediate closure orders in accordance with Section 2070.2.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code

§ 2074 Petitions for Reconsideration.

(a) A respondent may petition the Office of the State Fire Marshal for reconsideration of a final order issued under Section 2073.1. It is requested, but not required, that three (3) copies be submitted. The petition must be received no later than 20 days after service upon the respondent of the final order. Petitions received after that time will not be considered. The petition must contain a brief statement of the complaint and an explanation as to why the effectiveness of the final order should be stayed.

(b) If the respondent requests the consideration of additional facts or arguments ~~he, the respondent~~ must state the reasons they were not presented prior to issuance of the final order.

(c) The State Fire Marshal, does not consider repetitious information, arguments, or petitions.

(d) Unless the State Fire Marshal, otherwise provides, the filing of a petition under this section does not stay the effectiveness of the final order.

(e) The State Fire Marshal may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event the State Fire Marshal determines to reconsider a final order, ~~he the State Fire Marshal~~ may issue a final decision on reconsideration without further proceedings, or ~~he the State Fire Marshal~~ may provide such opportunity to submit comment or information and data as deemed appropriate.

(f) The State Fire Marshal, shall issue notice of the action taken on a petition for reconsideration within 20 days after receipt of the petition. In cases where delay beyond that period is expected, notice of that fact and the date by which it is expected that action will be taken shall be issued to the respondent.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code.

§ 2075 Civil Penalties Generally.

~~(a) Payment of a respondent of a civil penalty proposed, assessed, or compromised under this subpart must be made by certified check or money order payable to the Office of the State Fire Marshal. Except as provided by Section 2071, such payment is sent to the Office of the State Fire Marshal, 1131 S Street, Sacramento, CA 95814.~~

~~(b) If a respondent fails to pay the full amount of a civil penalty assessed in a final order issued under Section 2073 or make an offer in compromise to the assessed penalty as provided by paragraph (c) of this section within 20 days after receipt of the final order, the State Fire Marshal, may refer the case to the Attorney General with a request that an action to collect the assessed penalty be brought in the appropriate court to the extent permitted under State law.~~

~~(c) Within 20 days after the respondent's receipt of a final order assessing a civil penalty issued under Section 2073, the respondent may offer to compromise the assessed penalty by submitting in the manner required by paragraph (a) of this section, payment in the amount offered. The State Fire Marshal or his designee may accept or reject the compromise offer on behalf of the Office of the State Fire Marshal. If it is accepted, the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If the compromise offer is rejected it will be returned to the respondent with written notification. Within 20 days after the respondent's receipt of such notification, payment of the full amount of the civil penalty assessed in the final order becomes due. The provisions of paragraph (b) of this section regarding court action for penalty collection apply upon failure of the respondent to pay the assessed penalty within that time period.~~

~~(d) If the respondent elects to make an offer in compromise to a civil penalty proposed in a notice of probable violation issued under Section 2070, he shall do so in accord with the procedures of Section 2071.~~

(a) When the State Fire Marshal has reason to believe that a person has committed an act violating any provision of 49 U.S.C. 60101 et seq, 49 C.F.R. Parts 190, 195, 199, and 40, or California Government Code section 51010 et seq., or Title 19 of the California Code, the State Fire Marshal may initiate proceedings to determine the nature and extent of the violations and appropriate civil penalty.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code

§ 2075.1 Payment of Penalty.

(a) Payment of a respondent of a civil penalty proposed, assessed, or compromised under this Article must be made by certified check or money order payable to CAL FIRE - Office of the State Fire Marshal. Except as provided by Section 2071.4, such payment is sent to the Office of the State Fire Marshal, P.O. Box 944246, Sacramento, CA 94244-2460.

(b) If a respondent fails to pay the full amount of a civil penalty assessed in a final order issued under Section 2073.1 or make an offer in compromise to the assessed penalty as provided by paragraph (c) of this section within 20 days after receipt of the final order, the State Fire Marshal, may refer the case to the Attorney General with a request that an action to collect the assessed penalty be brought in the appropriate court to the extent permitted under State law.

(c) Within 20 days after the respondent's receipt of a final order assessing a civil penalty issued under Section 2073, the respondent may offer to compromise the assessed penalty by submitting in the manner required by paragraph (a) of this section, payment in the amount offered. The State Fire Marshal, or designee, may accept or reject the compromise offer on behalf of the Office of the State Fire Marshal. If it is accepted, the respondent is notified in writing that the acceptance is in full settlement of the civil penalty action. If the compromise offer is rejected it will be returned to the respondent with written notification. Within 20 days after the respondent's receipt of such notification, payment of the full amount of the civil penalty assessed in the final order becomes due. The provisions of paragraph (b) of this

section regarding court action for penalty collection apply upon failure of the respondent to pay the assessed penalty within that time period.

(d) If the respondent elects to make an offer in compromise to a civil penalty proposed in a notice of probable violation issued under Section 2071.3, the respondent shall do so in accord with the procedures of Section 2071.4.

(e) Respondent waives all administrative and judicial rights and remedies upon acceptance of civil penalty payments or acceptance of an offer in compromise the State Fire Marshal.

NOTE: Authority cited: Section 51010, 51011, and 51018.6, Government Code. Reference: Section 51010, 51011, 51018.6 and 51018.8, Government Code.