

NOTICE OF ALLEGED VIOLATION (NOAV) AND ENFORCEMENT QUESTIONS

MARCH 1, 2014

1. What is a NOAV?
 - A NOAV is a “Notice of Alleged Violation” as described in Commission Rule 522. If an operator has received one, the Commission has reasonable cause to believe the operator has violated a Commission Rule, Order, permit, or the Oil and Gas Conservation Act, § 34-60-101 *et. seq.*, C.R.S. (“Act”).
2. Where can I find the Commission’s Rules?
 - Commission Rules are located within the Code of Colorado Regulations, 2 CCR 404-1.
 - Commission Rules are also provided on the Commission’s website, <http://cogcc.state.co.us/>, under “Rules.”
3. What should an operator do if it receives a NOAV?
 - The operator should carefully review the factual and legal basis for the alleged violations and immediately contact the Commission staff member it is directed to contact in the letter accompanying the NOAV. The operator should also consult with legal counsel.
4. What happens if an operator does not meet the corrective action deadline?
 - If the operator cannot meet the corrective action deadline, the operator is responsible for contacting the Commission staff member it is directed to contact in the letter accompanying the Warning Letter or NOAV. The Commission may consider the operator’s failure to meet corrective action deadlines as an aggravating factor in the calculation of its penalty.
5. Will an operator have to pay a penalty associated with the NOAV?
 - NOAVs are only issued if there has been a Rule, Order, permit, or statutory violation. Pursuant to § 34-60-121(1), there are penalties associated with these violations.
6. What will the penalty be?
 - Commission Rule 523 sets the penalty schedule and penalties for specific rule violations, as well as lists mitigating and aggravating factors. Section 34-60-121 of the Act establishes the maximum daily penalty.
 - The penalty for a rule violation will be calculated according to the base penalty of the particular rule violated; the degree of threatened or actual impact to public health, safety, welfare, the environment or wildlife caused by the alleged violation; the duration of the alleged violation; and consideration of mitigating and aggravating factors.

7. If an operator meets the corrective action requirements, will the penalty be waived?
 - If the operator was issued a Warning Letter and meets the corrective action requirements, then the penalty will be waived.
 - But if the operator was issued a NOAV and meets the corrective action requirements, the penalty will *not* be waived. However, the Commission will consider cooperation and prompt responses to alleged violations as mitigating factors in the calculation of the operator's penalty. As a result, it is always in the operator's best interest to comply with corrective action requirements timely and thoroughly.

8. Can an operator request an extension of the corrective action deadline?
 - Under some circumstances and for demonstrated good cause, Commission staff may grant a request for an extension of corrective action deadlines.

9. What happens if an operator does not respond to a NOAV and does not perform the required corrective action?
 - Commission staff will refer the NOAV to the Enforcement Staff for prosecution of the alleged violations.
 - Noncompliance is not an option. An operator can either comply with Commission Rules and never be issued a NOAV, comply with Warning Letters and corrective action without penalty assessment in certain cases, or comply with the Rules after a Commission compliance order with a penalty.

10. Why does the Commission issue NOAV's to operators?
 - The Act directs the Commission to ensure that the development of Colorado oil and gas resources is balanced with the protection of public health, safety, welfare, and the environment. The enforcement of Commission Rules, Orders, permits, and Act through NOAV's and penalties helps fulfill this directive by incentivizing operators to take due care in their operations, effectively remedying impacts to public health and the environment, and preventing future harm.

11. If an operator receives a NOAV, does the operator have to appear before the Commission in a hearings proceeding?
 - The receipt of a NOAV does not necessarily require an appearance before the Commission. Commission staff and operators may negotiate an Administrative Order by Consent (AOC) resolving the case without a contested hearing. Such consent orders are approved through a summary process, which generally does not require an appearance before the Commission.
 - Contested cases require an Order Finding Violation (OFV) hearing before the Commission.