**Enforcement Process Webinar**

August 20, 2024, 3:48PM

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Hi, I'm Michelle Grover.  
I'm the enforcement supervisor for the Bureau of Air Quality Planning at NDEP.  
I'm going to be giving a talk today about what happens when your facility gets referred over to enforcement.  
So just some housekeeping.  
This is part of a larger webinar series.  
There has already been a three webinar topics presented: Understanding your air permit, what to expect during an inspection, and source testing for facilities. All of these can be found on our YouTube if you just search @nevadadcnr, you'll find DCNR’s YouTube and the air webinars are uploaded to that within a week after they happen. And then upcoming, we have a record keeping with a template webinar happening sometime in September so keep your eyes peeled for that one.  
It will go out on the listserv and also to anyone who is an attendee of any of the webinar series for an invite, and then that will also be uploaded to YouTube afterwards.  
As we go along, please feel free to ask questions.  
You can put them in the chat.  
Gregg will be moderating that and see them or you can raise your hand and we'll call on you and unmute you so that you can ask your questions.  
You can ask that any time during the presentation and they'll also be additional time at the end of the presentation to cover any additional questions you might have.  
Any questions before we get started?  
So today we're going to go over: how did we get here; how did you get referred over to enforcement; what the types of violations are, what a letter of alleged findings is and what it contains; what happens at an enforcement conference; what to expect; what the outcomes of enforcement can be, so what happens when we make final decisions; we will also do a penalty matrix walkthrough during that, so just kind of a quick and dirty one; and then we'll talk about appeals and how that process works; and then what happens after your enforcement case is closed, like what that means, if there's anything that's going to linger and that you need to be aware of moving forward.  
So how did we get here? So the compliance branch in the Bureau of Air Pollution Control, they went out and did an inspection or they reviewed records or they reviewed source tests in-house and they found issues that they felt were out of compliance with your facility’s permit.  
For Class 2 minor violations, the inspector may already issue a Field NOAV before it even gets to enforcement, and that goes directly to the facility. Shannon talked about that during her What to Expect During an Inspection talk.  
So we'll kind of briefly cover some things, but feel free to go to the YouTube to watch that one if you missed it.  
Any issues that are found during an inspection will be communicated to the facility verbally and then any like records review, source tests, and inspections will be emailed once the final report is completed by compliance, and that will indicate if there's issues that they are sending over to enforcement as well.  
So you should get that before you hear from enforcement.  
To find your final report, if it isn’t emailed to you or you think you should have it already, you can also do a record search.  
So I included the link there to our website where you can search for any public records relating to your facility.  
That will all be up there.  
After that, any alleged violations will be sent over to enforcement by compliance.  
I think it's important to note that enforcement is about things that have already happened, so even if you have gotten back into compliance or you fix the things that were wrong, enforcement is about what has happened.  
Getting back into compliance saves your facility from future violations and ongoing violations if it's something that was noted. So, if it was noted and it wasn't fixed, that's an ongoing violation and need to fix that before you get sent back to enforcement for the same issue.  
So the beginning of enforcement. Our enforcement staff will receive the compliance report, whether that be an inspection report or a source test review. Whatever they were reviewing that they found the potential violations in. Enforcement will then examine the alleged violations, making sure they’re viable. We're not perfect.  
Sometimes we miss things or look at a different permit iteration.  
If we find things, we can dismiss them if we find information that's contradicting the violation, and then we move forward with those that remain. And those that we move forward with, we write into a letter of alleged findings, also known as a LOAF.  
So before we get into LOAFs, let's talk about the types of violations.  
So we have minor violations and these are only for Class 2 sources.  
They are listed out explicitly what is a minor violation in the NACs, and I've included that table here.  
So as you can see, they have a first, second and third offense with different monetary penalties attached to each and what specifically the violation is for that.  
If you don't see them on here, that means they're a major violation.  
At this point, most minor violations will be taken care of through Field NOAVs, but it's still possible to see them in a LOAF and from enforcement.  
So the other type of violations we have our major violations. So these can be for Class 1 facilities and Class 2 facilities.  
So any minor violations after you get that third offense with the same type within the last sixty months, or five years, those now become major violations.  
So if you are a Class 2 facility and you got your first, second and third record keeping violation, any record keeping violation in the next sixty months is now a major violation.  
And for Class 1’s, everything is always a major violation.  
Major violations come with a monetary penalty of up to $10,000 per day per violation.  
We typically don't go for the full amount though.  
We calculate the recommended penalties using the penalty matrix as set up by the division and the State Environmental Commission, which we typically called the Commission or you might hear it called the SEC.  
And we'll talk about the penalty matrix in a little bit and do a walkthrough.

So on to the LOAF, a letter of alleged findings.  
It consists of a cover letter that contains general information that any facility that gets a LOAF, it has that general information to tell you: this is what an enforcement conference is, this is what we're going to be talking about, and it will have a time and a date for the enforcement conference.  
The LOAF is always sent to your responsible official, or your RO.  
So make sure that your RO's mailing address and e-mail address are always up to date with us because it will be going to that person.  
If you want additional contacts, we can incorporate that, but we always send this out to the responsible official.  
It will also contain the items that we're going to discuss at the enforcement conference. So, there will be a general overview with them listed out by what type of violation and a little summary and then more in-depth info will be included in the appendices where it's necessary. After the general overview, there will be an order to appear.  
So that is an order a directed towards your responsible official telling them, again, the date and time to appear and how we're going to do that.  
So if it's in person or virtual, that kind of thing. After that, there will be any of the appendices with supplemental information, if it's needed.  
So this could be pictures, it could be tables of, say there's throughput violations,  
it'll have the throughput, the date that it happened, the amount that was over, that kind of things just so that facilities are as aware of possible of what we're going to be talking about and you can come prepared to the meeting to tell us what happened.  
It's also important to note that the LOAF will not always contain everything that we have. A lot of times there's things that just don't fit into the LOAF, such as a video, like we can't put that on paper, so we may have additional information that is not included in LOAF.  
But in general, we try to include everything that we can on here so that you know what we're going to be talking about.  
There's no surprises.  
It's all about boards.  
So after you get the LOAF, we'll invite you to the enforcement conference, and the enforcement conference is really an informal meeting to discuss the contents of the LOAF.  
Like I said, the responsible official is only one required to be present. A lot of times more people come, say a facility manager, somebody who can help explain more in-depth some of the alleged violations and help us understand what might have happened.  
Your facility can also bring lawyers if they want, but if they do, we may also bring legal counsel and we always ask in the LOAF that you let us know if you're bringing lawyers so that we can get prepared if we feel like we need our legal counsel as well.  
In general, most people do not bring their legal counsel to these, but you are free to do so.  
The enforcement conference can be in-person or virtual, depending on the case and kind of where the facilities located.  
So if you're located close to the Carson office, we typically like you to come in.  
If it's a big case and there's a lot of things that we need to go over, we typically also like the facility to come in-person.  
If it's a smaller case and say it's a few items and the facility is located out in Elko, we're probably not going to have you come in for a twenty minute enforcement conference.  
We'll hold it virtually.  
Another thing is if you can't make the date that we set for the enforcement conference, please feel free to call us and we can talk about arranging a different date.  
Like, if you're going to be on vacation, we typically set them for two weeks out.  
So if you're going to be on vacation or something, we can move it to like the next week.  
We don't like to extend it a lot, but we can move that enforcement conference date if it's not going to work for your facility.  
On our side, who comes to the enforcement conference is typically the enforcement supervisor, so myself, and whichever staff member I have working on the case. We like to have the compliance inspector there and their supervisor when it is necessary. When we have maybe some permitting issues to talk about, we will also invite some of our permitting team.  
Our Bureau chiefs may come since compliance and enforcement are in two different bureaus.  
We both have different Bureau chiefs, so they may come. And every once in a while, a deputy administrator will come from our side, but that's also rare.  
So the enforcement conference itself is, kind of, the facilities opportunity to present additional information; explain circumstances around what happened; take responsibility, you know, like, “Yes, that did happen. We're really sorry. Like, we've done things to correct it.”  
Tell us about the corrections that you've made.  
None of these guarantee you're going to get out of an enforcement outcome, but everything helps, right?  
The division, we might request a more data or records to help us come to decisions.  
However, I want to note that priority is going to be given to those original records that were collected by compliance, right?  
Your records are supposed to be up to date and accurate, so coming with a different set of records is not going to hold the same weight as the original records that we already have.  
At this time, we'll answer any questions that the facility may have and will ask questions of the facility if we're confused about things. And we'll discuss the potential outcomes, which we'll talk about next, what the outcomes of enforcement conferences can be.  
Is there any questions before we get going into kind of more meaty stuff?  
No.  
OK, alright.  
So the outcomes is where you could get a Notice of Alleged Violation or a NOAV.  
So we could dismiss, and we'll go into each of these and a little bit more detail.  
So there's a dismissal, there's a warning, there's administrative fines, a settlement and a special type of settlement is a supplemental environmental project, or a consent decree.  
So those are, kind of, the outcomes that can happen.  
So first a dismissal.  
So a dismissal means that evidence has been presented that the violation did not occur at all, and many cases will contain partial dismissals even if we don't, like, dismiss everything.  
So just know, that that's a very typical that we have partial dismissals, rare that everything gets dismissed.  
The next tool we have is a warning. So a warning says a violation did occur.  
This is a full violation, but the division is not going to recommend a monetary penalty associated with it.  
You know, we have many reasons to issue a warning.  
For example, a facility failed of source test.  
They had a low exceedance.  
They rescheduled the test immediately, like, when they found out they passed that and they were able to prove that the reason why they had failed had only been in place, like, a few days.  
So say their maintenance records were able to show that they did regular maintenance on their baghouse and the baghouse had had an issue that had been in place, like, the day before.  
So we might issue a warning in that case because they didn't exceed by much.  
They were able to provide lots of records to prove that what happened and that it wasn't going on for a long time, that sort of thing.  
So there's many different reasons why we would issue a warning, but that's kind of an example.  
Warnings can be appealed, and we'll talk about the appeals process later.  
So they have to be appealed within ten days of receipt of the warning, ten calendar days, and they will stay on your facilities record for the next 60 months, or 5 years.  
So next we have administrative fines, so we have minor administrative fines and majors.  
We'll talk about minor first, and so this penalty amount is based off of that table that I showed you earlier with the minor penalty amounts.  
Once again, these are issued as a field NOAV or can be issued as part of LOAF.  
Mostly we'll be seeing them as field NOAVs going forward.  
So these are also only for class two facilities.  
You can get multiple minor violations at once.  
For example, you could get a first, second and third record keeping violation and one fugitive desk violation issued all at once.  
They can be appealed. So just like the warnings, and they must be paid or appealed within 10 days of receiving your final NOAV.  
So for major administrative fines, these kind of work a little differently. The penalty amount is based off of calculations from the penalty matrix.  
The penalty matrix takes into account a lot of different elements for the type of violation. We'll, kind of, look at that matrix next.  
You can get multiple major violations at once, so if you have different violation types, you can get issued multiple ones at once.  
Once the final NOAVs are issued, you have ten days to appeal them following the receipt of them, and we'll talk about that appeals process in a bit. After the appeal period is passed that NOAV is final.  
You can't debate that that violation happened anymore, and we will request from a future hearing with the State Environmental Commission to talk about the actual penalty amount, and it is the commissions purview to actually hand down that final penalty amount.  
So we make recommendations, but the Commission is who actually decides what that final amount is going to be.  
OK, so the penalty matrix once again made by the division and the Commission.  
It's split out by permit class and penalty type, you know, so depending on the penalty type, we can look at different things like how many emission units or systems, how many tests we're supposed to be done, what the reporting period was, how many pollutants and, like, a lot of them include a time basis.  
So are we looking at daily, weekly, monthly, per event, that type of thing. There can also be extra or additional multipliers added depending on the pollutant type.  
So if we're dealing with, like, a hazardous air pollutant, or HAPs, you'll get a multiplier based on that because we're more worried about what they're doing to the public health and environment.  
So let's look at the penalty matrix and the penalty calculation worksheet.  
So this is the penalty matrix.  
It is two pages and it, kind of, you can see that it outlines going down this column the permit class, so 1, 2, General, SADs. We don't really have Class 3 permits anymore, but they're still on there.  
And then across the top you can see this is the type of violation.  
So to use the penalty matrix to just go from the type of violation down here to the permit class, and you can find the basis. And it will tell you, like, how you're supposed to be accounting for that with the timeline basis at the bottom.  
So event and sometimes it's within the thing itself.  
So this is page two, kind of, goes into some failed source tests.  
Anything that's not directly included on here comes with a base penalty of $1,000.  
We tried to make this as comprehensive as possible, but if there is something that we missed then it just gets a straight $1,000 base penalty.  
OK.  
So then all of that gets used to calculate in the penalty worksheet, and this penalty worksheet is what actually goes over to the Commission when we're presenting penalties.  
It'll have the gravity component with the base penalty.  
Could have, like, deviations, so if it's a source test or CEMS, we'll have volume of release adjustments.  
If there was an opacity, they'll opacity adjustments.  
Toxicity of release and all of these can be found on the third page of this, so we'll get to that.  
Then you calculate the face dollar amount and then use the time or units, whatever the penalty matrix says that we should be looking for these to get the total gravity fine.  
We can then add economic benefit if there's delayed cost or avoided costs, although we haven't typically in the past, that is there for us to use. And then we add them all together.  
There are also penalty adjustment factors, which we'll talk about, kind of, towards the end, which is mostly your history of non-compliance.  
So you have past non-compliance issues.  
Take the total penalties.  
So that's, kind of, how that works.  
And then down here is the third page which has.  
What we're going to be using as multipliers, so like opacity.  
Depending on what the opacity is, gets you the different multiplier.  
So if it's 40%, between 40 and 50%, you multiply it by four, that type of thing. For CEMS and source testing, you take however much the exceedance was, so if it was 150% of the limit, you get a ratio of 1.5.  
So you multiply your penalty by 1.5.  
Hazardous air pollutant, you can see down here, gets a 2X multiplier.  
So that's just kind of a quick and dirty how we do it.  
Here's a, like, example.  
So say we have a Class 1 facility that failed to source test.  
We look at the type of violation highlighted in red and then we find the permit class.  
We come in here to see a what the amount of the base is.  
So say it was just a regular pollutant, so $4,000 base penalty per pollutant.  
It requires a retest to verify it compliance so compliance will send out a retest order, in this case, if the facility hasn't already taken it upon themselves to do that retest.  
And then we also look at that third page.  
So, since this was a source test and the regular pollutant, it doesn't really matter; they're all the same, but it is greater. And if they say they failed by the 150%, again, proportional to R, so 1.5. If it was under 120%, it would just be the base penalty.  
So that's, kind of, how we use that.  
Any questions on the penalty matrix?  
I know that that's probably where most people.  
OK, Tammy, you should be able to meet yourself now.

 **Werner, Tammy** 43:00  
Thank you.  
Is this worksheet provided as part of the discussion, or is that internal use only?

43:07  
So it's not internal use only.  
You can find it.  
That was kind of what Gregg sent out, that PDF form.  
It's always been on the commissions website and we are working to put it on our website as well, but it's always been on the Commission 's website, and Gregg provided the links to that now.

 **Werner, Tammy** 43:29  
I mean they completed version when you're dealing with an action.

43:37  
Ohh, when you're dealing with an action, no.  
We typically just give you the NOAV and the amount to the facility.  
But I am not opposed to including this as we are going through it for facilities going forward in the future.

 **Werner, Tammy** 43:58  
That would be interesting because it may help guide decisions, whether we're going to question or just accept things as they are and move forward. Thank you.

44:13  
We typically wouldn't have that available at the enforcement conference just because there's a lot of uncertainty that, you know, there may be things that may be dismissed based off of those conversations and stuff like that.  
But if after the enforcement conference and you have interest in that, just let us know when we can.  
Yeah, I think I meant at the, like, when we issue the actual violation cause at the enforcement conference, nothing is official or final or anything, and we do often have partial dismissals.  
So if we provided this at the Enforcement conference, a lot of times that number is not what we actually issue at. It's a lot lower.  
Or we find out more information.  
It could be higher, so until we know for sure.  
But we also always let facilities know before we officially issue the NOAVs.  
So maybe that would be a good place to do it before they're officially issued.  
And then you would know.

 **Werner, Tammy** 45:18  
Thank you.

45:19  
Yeah.  
Another hand.  
Scott, you should be able to unmute yourself now.

 **Scott Kirchhoff** 45:29  
Great.  
Thank you.  
Can you all hear me?

45:31  
Yep.

 **Scott Kirchhoff** 45:32  
Can you finish your example like all the way through on what the calculation would be for that particular issue?

45:42  
OK.  
Yeah. So, on this particular issue, I said.  
So we said normal pollutants, so $4,000, one pollutant, so times 1, and then we said it was 150%.  
So then going down, we just do a ratio proportional and it's greater than a hundred twenty percent.  
So it's times 1.5, so $4,000 times 1 times 1.5, would get us the final penalty of six thousand.

 **Scott Kirchhoff** 46:19  
OK.  
And that's per pollutant.  
So if you fail, like, NOX and a HAP, it would be 2 times that we had two pollutants that failed.

46:29  
So yeah, so the NOX would be computed at 1 and then if there was a different pollutant that was a HAP, it would be whatever that HAP failed at, and then a 2X multiplier on top of that.

 **Scott Kirchhoff** 46:41  
That's right, the HAP is multiplied by 2.  
OK, alright.

46:44  
Yeah, so say so it would be like $4,000 times the 1.5 times 2.  
So then a $12,000 penalty.

 **Scott Kirchhoff** 46:56  
And is that just a one-time penalty or is it like it's been five years since your last source test that you passed?  
I mean like is it just a one time or do you guys add on days since last compliance?

47:11  
So for failed source test, the multipliers are in place to kind of account for the time period.  
There is not a time basis on this one.

 **Scott Kirchhoff** 47:21  
OK.

47:21  
If there was, it would say at the bottom here.

 **Scott Kirchhoff** 47:24  
Gotcha.

47:25  
So yeah, so let's go back to this.  
So, like, these ones will have, so, like, here if you have constructing your operating without a permit, a minimum weekly to monthly discretionary.  
So if you, build something and then didn't have a permit, we could go weekly or monthly on our discretion for however long it's been there.

 **Scott Kirchhoff** 47:52  
OK.

47:54  
And, kind of, adding to that for the failed source test.  
We also do expect a retest as Michelle stated.  
So ideally you would not have a failed source test that is five years old before your next passing source test.  
We would expect, and this is in the source testing webinar as well if you want to go back and revisit that, we expect within 60 days a retest to show passing results.  
Otherwise, it could be considered a late test or failure to test for that retest.

 **Scott Kirchhoff** 48:33  
OK, and if you do fail your source test and you go, “Oh, our catalyst. We replaced all our catalysts.” And then we do the retest, and we pass, then all is good?

48:45  
So then you're back into compliance.  
That doesn't necessarily mean that you will not be seeing something from enforcement.

 **Scott Kirchhoff** 48:52  
Yeah, but we would be good to go.

48:55  
But yeah, you're back in the compliance.  
You don't have to do additional testing following that, as long as you've passed after you failed.

 **Scott Kirchhoff** 49:02  
OK. Excellent.  
One other question, just kind of more of an administrative question.  
You mentioned earlier that the LOAF email will go to the person responsible.

49:15  
Mm-hmm.

 **Scott Kirchhoff** 49:16  
How do we add additional people to get informed of those type of things?

49:46  
Yeah, there is a form on the NDEP download permit forms web page that has a way to for the RO, the responsible official has to be the one to be able to either change, add or remove contacts, but the data management branch should be able to handle that once you submit the form to them.

 **Scott Kirchhoff** 50:07  
OK, so have the person responsible submit the form to get people added on. OK.

50:12  
Correct.

 **Scott Kirchhoff** 50:15  
All right.  
Thank you.

50:16  
Thank you, Scott.  
Any additional questions before we move on.  
Yes, we do.  
Alright, you should be able to unmute yourself, Satyra.

 **Satyra George** 50:44  
Yes.  
Sorry, can you hear me now?

50:46  
Yes.

 **Satyra George** 50:47  
Perfect.  
So I just had a clarifying question for prior NOAVs, that adjustment to the base penalty.

50:53  
Mm-hmm.

 **Satyra George** 50:54  
So is that for each individual prior NOAV? They're doing the 3, 2, or 1.5 times, if it's a 1 and if it's the case of 2, it would just cumulatively use them all together, so you could have, over 300% if you had multiple prior NOAVs in the previous 5 years, correct?

51:21  
Yeah.  
So that 300%, 200%, and 150% is only if those other NOAVs are in the same type of violation.  
So if you fail to source test in the last five years and then you fail a new source test, that's when you get that similar violation, the penalty.

 **Satyra George** 51:40  
Mm-hmm.

51:41  
But say you had record keeping violations and then you fail a source test.  
Those aren't the same type of violation, so that makes it go to like all recent violations.  
So if you had three record keeping violations, then you get a fifteen percent multiplier and, not, so you won't get a 300%, 200%, 150% multiplier, because those are different.  
But if they're the same type of violation, even if say so, if they fall under the same categories as any of these.  
So if you have multiple failure to installs, those, that's when you get that bigger percent multiplier and then you will also get, yeah.

 **Satyra George** 52:17  
Mm-hmm.

52:27  
So if it was in the last 1 year, you get the 300% multiplier and you had one, so it's a 305% multiplier, yes.

 **Satyra George** 52:39  
OK, so if I had, let's say, 3 records keeping, then those would be.

52:43  
Mm-hmm.

 **Satyra George** 52:45  
I'd have three 150%.

52:50  
Oh no sorry, just one, so yes so that's just yes.

 **Satyra George** 52:52  
Came relative just one.  
OK, that's what was clarifying. OK.

52:57  
Yeah.  
Yeah, because that's already quite a big multiplier.  
So you would just get the 1.5, but if it happened over 3 years ago, and even if you had 3 of them. But you would still get, the 3 would come in when you look at all recent violations in the last 5 years, so we just count up how many violations have you had and then multiply that by 5. But you won't get doubled on the similar NOAVs.

 **Satyra George** 53:24  
OK.  
OK.  
Alright, perfect.  
Thank you.

53:31  
Alright then moving on to appeals.  
We have another question actually and the chat from Alyssa Moody. She said, “Just to clarify, all violations admin minor and admin major stay on the record for 60 months, right?”  
Yes, that is correct.  
Everything stays on the record for 60 months.  
So basically, 5 years and I think the 5 years because that is the time period between when Class 2 inspections, kind of, fall.  
So yeah so, warnings, administrative fines, basically any final NOAV can be appealed within 10 calendar days of receipt and you appeal that with the commissions appeal form #3, we send that out in the mail with your final NOAVs, that form, we e-mail it to you because we always e-mail courtesy copy of our final NOAVs. And it can be found on the Commission's website, that appeal form.  
Appeals are really only to say that your facility thinks that that final NOAV does not really have merit, that you know, talking about the penalty amount is not what an appeal is used for.  
Talking about the penalty amount should be reserved for the actual Commission hearing.  
Once your facility sends in that appeal form to the State Environmental Commission, the Commission has to turn around and have an appeal hearing within 20 days of receipt by the Commission.  
That 20 days can be waived by both sides to get your legal counsel together, and that is typically what happens.  
It's also hard for the Commission to get together in that 20 days. So that 20 days is typically waived, but it can go as fast as that.  
After that, a specific schedule and time frames for each side to present their arguments will be decided upon by the Commission and send out to both the division and the facility doing the appeal.  
If the Commission decides after the appeal hearing, to uphold the final NOAV, then a normal Commission hearing, like typical, will happen at a future date to decide on the penalty amount.  
If the Commission does not uphold the final NOAV, then the NOAV will be dismissed.  
That penalty is off the table and that NOAV goes away.  
OK, so after that, if we've done appeals or it wasn't appealed, we go to a Commission hearing.  
So at a Commission hearing we present any of the NOAVs that we gave to your facility to the Commission, we explained what happened, why it's important that any facilities in the state do not commit these types of violations, and we walk through how we came to the penalty amount.  
So, kind of, like we just did with the highlighted penalty matrix, we walk through that with the Commission so that they know.  
Then the Commission will ask clarifying questions of us, and we'll answer to the best of our ability after they finish asking us any questions that they have, the Commission will invite the facility to speak.  
This is an optional.  
If you're facility doesn't wish to speak or is just agreeing with the penalty amount, you don't have to come to these, but you are always invited to come and speak for your facility, either in person or virtually through Teams.  
At that time you can speak about the penalty amount.  
This is not, however, the time to talk about the merits of the violation.  
That should be done with an appeal.  
So just like during an appeal shouldn't be used to talk about the penalty amount, at the hearing shouldn't be used to talk about the violation.  
It should be used to talk about the penalty amount.  
If the facility chooses to speak, the Commission will ask clarifying questions of the facility and then after that the Commission will have a general discussion amongst themselves, and they will make a final ruling on that penalty amount.  
I will say they typically stay with our recommendation, but we have seen it go up and we have seen it go down.  
I think just once on each of those in the recent years, so be aware that the Commission can change it both to increase the penalty amount and they could decrease it, but almost always they have stayed with our recommendation because we did build that penalty matrix in conjunction with them.  
Once the Commission makes a final ruling on the penalty amount that has to be paid within 30 days. Failure to pay is a misdemeanor.  
We've never seen it go to a misdemeanor, but just know that that is how the regs are written.  
So another thing that we can do is a settlement.  
So a settlement is kind of an agreement between the division and your facility.  
So this typically happens if we have a really large penalty from the penalty matrix or we want the facility to install additional controls.  
It can be a mixture of monetary penalties, additional controls, updates to the facility, updates to your record keeping program, like, hiring a QC manager like that kind of thing can be included in settlement agreements.  
Final NOAVs will still be issued with settlement agreements, though that will stay on your record for the next 60 months.  
So going through a settlement doesn't get rid of the final violations.  
They will also be issued at the same time. If settlement talks fall through, we will go back and do a Commission hearing with the penalty amounts.  
So something that has come up recently is a special type of settlement called a Supplemental environmental project.  
So these are a settlement agreement that we enter into with the facility to do an environmentally beneficial project which the facility agrees to do to settle your enforcement action and it has to be equal to at least 125% of the penalty.  
So it needs to meet certain criteria of public health, pollution prevention reduction, environmental restoration and protection, assets and audits, or environmental compliance promotion.  
It can't be unrelated to Environmental Protection, and since these are air penalties, we want to see these projects he related to air quality.  
It can't be a project that you would already have to perform legally to be in compliance.  
It can't be a corrective or preventative measure to prevent you from doing the violation again, you have to do that anyways to come back into compliance and to be in compliance, and it can't be a project that gives us money or additional resources to do an activity that the legislature already appropriated funds for us for.  
In addition, you have to provide a written plan of exactly what the project is, exactly how each of the things that you're going to do will meet the penalty amount, during the project you have to give us updates, and you have to do a closeout report detailing what was done and how the penalty amount was met.  
When you first give us the proposed project, we have to take it to our administrator for them to approve, and if they don't approve it, you either have to go back to the drawing board or we are not going to approve a SEP and we'll just go back to a Commission hearing with a full penalty.  
There are a lot of things to consider when undertaking a SEP, including that 125%  
bump-up of the penalty amount.  
So the last type of thing is a consent decree.  
This is really similar to a settlement, but with a judge overseeing the final agreement.  
So this happens if it's a large amount.  
If there's a lot of things that we need done and we need it tracked by a judge.  
And if you don't meet the requirements of a consent decree, then it goes back to the judge.  
It goes to court.  
OK, so your case is closed.  
Appeal periods have past, penalties have been levied and paid, settlement and consent decrees all the portions have been completed to our satisfaction.  
Is that it?  
We've already kind of talked about it, but all final NOAVs stay on the facility record for 60 months and they will be used as a multiplier for if you have further violations in the next 60 months, so your history of non-compliance.  
So we kind of talked about it, similar violations.  
So of the same type, get those bigger multipliers depending on how soon that repeat has happened.  
And then all recent violations get multiplied by 5% to get an additional multiplier to get your total penalty adjustment.  
OK.  
So that's what we have for you today.  
If you have any questions, I'd be happy to answer them now.  
Thank you guys for coming and definitely come and tune in for the record keeping talk coming up.  
Alright, not seeing any additional questions.  
I will put a few links into the chat right now and kind of just go over some of this.  
So the first link is a survey link.  
It's a quick six question survey based around this webinar.  
We ask that you complete this and participate. Three of the questions are optional.  
It really helps us improve our abilities with these webinars and helps us understand what facilities and industry needs in order to be able to be informed of air pollution and NDEP topics.  
The second link is the record keeping webinar is scheduled for September 16th from 9:00 AM to 11:00 AM.  
That might change, but it's doubtful we will keep you updated if there are any changes to that, but there will be a template, an Excel template, that will be provided prior to the webinar on our website and you should be able to access it and look at.  
It will also be making a guidance document that may be completed before the webinar.  
However, more than likely it'll be completed after the webinar, but that will also be available on our website.  
The next two links are the video recordings on our YouTube channel for the How to Read Your Air Quality Operating Permit webinar and the Source Testing webinar. The What to Expect During an Inspection webinar is being uploaded and should be uploaded today and will be provided in the next e-mail to registrants and to our listserv.  
So you can also keep an eye out for that.  
Also I want to mention that in all of these webinar recordings, there are links in the YouTube description for the surveys for those representative webinars.  
We again really ask that you look at that the How to Read Your Air Quality Operating Permit recording was already finalized for the for the survey, but the Source Testing webinar is still open for their survey and it will also be open for the What to Expect During an Inspection.  
And then also this webinar will stay open, this survey for this webinar will stay open for about a month after it is posted.  
It looks like we have one question from Alyssa.  
“When something is sent to enforcement, how long will we be notified of what the outcome is from enforcement?”  
So it really depends.  
We're trying to speed it up and turn it around faster, but it has been taking quite a while.  
No longer than two years, but we're trying to do it a lot faster than that, so I can't specifically say. If you are in the middle of enforcement and you haven't heard from us, feel free to reach out.  
We will give you an update if you reach out and tell you what's going on.

And, kind of, on those same lines for compliance, that's one of the reasons that we send out our inspection reports.  
We send out communication if there is a failed source test or any sort of action that we would recommend to enforcement, so then you're at least aware that that is something that is out there.  
But yes, please contact enforcement if you want any updates on the enforcement process.  
Great.  
Well, again, thank you all for coming and we can conclude today's webinar.  
Thanks so much.