



STATE OF  
COLORADO

EnviroScan - DNR, OGCC <dnr\_ogcc.enviroscan@state.co.us>

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## Fwd: NOAV 200417500

1 message

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**Fischer - DNR, Alex** <alex.fischer@state.co.us>

Mon, Jan 5, 2015 at 2:46 PM

To: OGCC EnviroScan - DNR <dnr\_ogcc.enviroscan@state.co.us>

Cc: Kris Neidel - DNR <kris.neidel@state.co.us>

Please upload the attached with the following information:

Unique identifier (REM/Spill/NOAV #, etc.): REM 7058; Location ID: 324634; Pit

Facility IDs 112268 and 112269, NOAV 200417500

Document number (leave blank if one needs to be assigned):

Date received: 12/30/14

Is data entry needed (Y/N): N

Notes: please upload email

Thanks!

----- Forwarded message -----

From: **Gowen - DNR, Peter** <peter.gowen@state.co.us>

Date: Mon, Jan 5, 2015 at 2:38 PM

Subject: Re: NOAV 200417500

To: "Freeman, Roger" <Roger.Freeman@dgsllaw.com>

Cc: "Alex Fischer - DNR (alex.fischer@state.co.us)" <alex.fischer@state.co.us>

Roger:

I believe we are in substantial agreement as to the first paragraph of your December 30, 2014 email.

As to the second paragraph, I do not believe we agreed to any particular methodology for calculating a potential penalty under NOAV No. 200417500, issued November 21, 2014. Commission staff has made no determination at this point as to how the penalty will be calculated. The Commission reserves all rights to assess a penalty considering all relevant factors and applicable law.

Peter Gowen

Enforcement Officer

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[www.colorado.gov/cogcc](http://www.colorado.gov/cogcc)

On Tue, Dec 30, 2014 at 5:58 PM, Freeman, Roger <[Roger.Freeman@dgsllaw.com](mailto:Roger.Freeman@dgsllaw.com)> wrote:

Peter/Alex - Thanks for meeting with us on December 17 to discuss the above referenced matter. I believe that we have a solid understanding of our respective positions and mutual path going forward for resolution of the NOAV, and have agreed that there is no need for lengthy follow-up emails before our next submission date of January 15, 2015. However, I thought it would be useful to briefly summarize our mutual plan to ensure that we are on the same page. We agreed that CM will submit by January 15, 2015 a concise, technically-focused discussion describing steps that will be taken to decommission the remaining five pits. This will include final dates by which closure and compliance with Table 910 standards will occur for each pit. We will try to account for all the uncertainties, changing weather conditions, and other factors that have proved difficult to assess in the past and propose dates that are realistic but as aggressive as possible. This submission will then be subject to COGCC comment and review and ultimately will be presented to the Director for final comment and approval. The approval vehicle will track the simple form and language developed in support of the previous COGCC extension granted on June 25, 2014.

We discussed pending rule changes briefly, and both parties recognize that the rules governing NOAVs, penalties and related matters are currently in flux. From CM's perspective, we would not expect that these prospective rules will apply to this pending NOAV, especially since the issues arise from a longstanding AOC which predates even the statutory changes. Nevertheless, we recognize that issues may arise (such as the vehicle through which the NOAV can be resolved without penalty) which may be informed by these pending rules. While agreeing to focus for the time being on technical issues, we agreed that (1) consistent with prior COGCC practices long established under the AOC, the time period during which we are negotiating this further resolution –including the time afforded to submit the January 15 response and subsequent COGCC review thereof – will not be considered to be continued days of alleged violation; and (2) the January 15 submission will be considered a timely interim response to Abatement/Corrective Action requirements of the NOAV itself as requested on page 1 of the NOAV.

Please let me know if you disagree with this summary or have any questions or comments, or if you feel the need to discuss this plan further. Otherwise, happy new year and will be back in touch by mid-January.

*Roger L. Freeman*

*Davis Graham & Stubbs LLP*

*1550 Seventeenth Street, Suite 500*

*Denver, Colorado 80202-1500*

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**Alex Fischer, P.G.**

**Environmental Supervisor, Western Colorado**



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