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T-304 P.02/07 F-004

MEMORANDUM

DATE: May 9, 2002
TO: Senator Michael A. Schneider
FROM: Carol M. Stonerfield, Senior Research Analyst
Research Division
SUBJECT: Motor Vehicle Emission Inspection Stations: Concerns of the Station Owners

This memorandum is written in response to your request that the Legislative Counsel Bureau contact the Department of Motor Vehicles (DMV), regarding concerns expressed by some of the motor vehicle emission inspection station owners in your district. It is my understanding that the owners were particularly concerned about the inspection of the inspection stations by the DMV.

BACKGROUND INFORMATION

The Nevada Legislature first acted to control air pollution by controlling emissions from engines in 1973 (*Nevada Revised Statutes* [NRS] 445B.700 through 445B.845). Since that time, the original program has been modified several times. Sections of the NRS relevant to the discussion of inspection station operations and designation of the inspection devices are summarized below:

- *Nevada Revised Statutes* 445B.770 provides that in counties with populations of 100,000 or more the State Environmental Commission shall adopt regulations for the control of emissions from motor vehicles in designated areas. The regulations must establish requirements, by which the DMV shall license authorized stations to inspect, repair, adjust, and install devices for the control of emissions, including the licensing qualifications to be met by any person performing those tasks.

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- *Nevada Revised Statutes 445B.775* provides that the State Environmental Commission must establish requirements by which the DMV may license authorized inspection stations.
- *Nevada Revised Statutes 445B.785* provides that the DMV shall adopt regulations to (1) prescribe the requirements for licensing authorized inspection stations; (2) prescribe the manner in which inspection stations inspect vehicles and show compliance; (3) prescribe the diagnostic equipment necessary to perform the required inspections, provided that the diagnostic equipment must comply with the standards of the United States Environmental Protection Agency; (4) provide for any necessary fee, bond, or insurance; and (5) provide for the issuance of a pamphlet to explain the program to motor vehicle owners.
- *Nevada Revised Statutes 445B.790* provides that the DMV shall establish procedures for inspecting the inspection stations. It also authorizes the DMV to deny, suspend, or revoke the license of an approved inspector or station if the inspector is not complying with the NRS, refuses to furnish requested materials or documents, has issued a fraudulent certificate of compliance either through negligence or willfulness, or does not follow the prescribed test procedures.

In addition to the NRS, the *Nevada Administrative Code (NAC)* 445B.4985 provides that the owner of the inspection station is responsible for any act or omission of an approved inspector employed by the inspection station, while the inspector is acting within the scope of his employment.

ISSUES SURROUNDING THE DMV'S INSPECTION OF THE INSPECTION STATIONS

The DMV has been granted the authority to develop regulations and programs to implement emissions inspections in counties with populations of 100,000 or more, according to NRS 445B.785. Your constituents' concerns revolve around inspection of the inspection stations authorized by NRS 445B.790 and required by 40 Code of Federal Regulations (CFR) 51.363.

In researching this issue, I have met with the following DMV representatives: Lloyd Nelson, Emissions Control Program Manager in the Management Services and Programs Division, and Ralph A. Felices, Chief Investigator in the Compliance Enforcement Division. In addition to individual conversations with Mr. Nelson and Mr. Felices, Robert Erickson, Research Director, and I also attended a workshop conducted on April 8, 2002, by the DMV and Mr. Nelson in Las Vegas. The purpose of the workshop was to elicit comments from inspection station owners and inspectors regarding proposed rule changes affecting the motor vehicle emissions inspection program.

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Authority for the Inspection of Inspection Stations

Nevada Revised Statutes 445B 790 directs the DMV to "establish procedures for inspecting authorized inspection stations" Mr. Felices said that the DMV procedures comply with federal regulations. Federal regulations governing performance audits of emission inspection stations address both overt and covert performance audits. The overt audits include an official visit to a site by a DMV laboratory technician, who observes a licensed inspector while he or she tests a vehicle. The laboratory technician will also review written records and document security.

According to 40 CFR 51.363, the covert operations shall include:

- (i) Remote visual observations of inspector performance, which may include the use of aids such as binoculars or video cameras . . . ;
- (ii) Site visits at least once per year per number of inspectors using covert vehicles set to fail . . . ;
- (iii) For stations that conduct both testing and repairs, at least one covert vehicle visit per station per year including the purchase of repairs and subsequent retesting if the vehicle is initially failed for tailpipe emission . . . ;
- (iv) Documentation of the audit, including vehicle condition and preparation, sufficient for building a legal case and establishing a performance record;
- (v) Covert vehicles covering the range of vehicle technology groups . . . ;
- (vi) Sufficient numbers of covert vehicles and auditors to allow for frequent rotation of both to prevent detection by station personnel; and
- (vii) Where applicable, access to on-line inspection databases by State personnel to permit the creation and maintenance of covert vehicle records.

Your constituents have asked whether the Nevada DMV is more stringent than federal regulations would require. The 40 CFR 51.364 requires "substantial penalties...on the first offense for violations that directly affect emission reduction benefits." Even though the NAC 445B.727 would allow a fine on the first offense, Mr. Felices said that in Washoe County the DMV issues only a notice of violation order to cease further violations at that time. Mr. Felices said that in Clark County a first offense receives a \$100 fine if the act is determined to be deliberate or intentional. For subsequent offenses within three years of the first offense, the DMV assesses \$750 for the second offense, \$1,250 for the third, and \$2,500 for the fourth. Further, the federal regulations allow for immediate temporary suspension of a

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license until an administrative hearing is held. The DMV does not suspend licenses until after the fourth violation, unless fraud is alleged.

Concerns of the Inspection Station Owners

Your constituents have identified several aspects of the DMV's covert performance audits about which they are concerned. These include:

1. Notice of violation received a number of days after the vehicle has left the premises;
2. The three-year period during which subsequent violations can be used to determine the amount of the fine; and
3. The cumulative liability of the station owner for violations incurred by inspectors in his or her employ.

Notice of Violation

Briefly, the station owners and inspectors said that, under the current DMV operations, the DMV covert vehicle is not identified to the inspector or station owner at the completion of the vehicle inspection. The person posing as a consumer leaves the station with the vehicle. Therefore, they said that they do not know if the failure on the part of the inspector performing the emission inspection actually occurred. For that reason, they said they cannot defend themselves in an administrative hearing to protest an administrative fine. They have requested that the DMV covert investigator identify himself or herself upon completion of the vehicle inspection, so that the investigator might explain what part of the vehicle inspection was incorrect. The station owners are requesting that the procedure become one of instruction.

Mr. Felices said that the DMV does not identify its covert performance audit vehicles to inspectors and station owners because that would shorten the time during which it can use the vehicle. He said that the agency rents vehicles from car rental agencies with used vehicles in their inventories, such as Rent-A-Dent. These rental agencies will allow the DMV to set up the vehicle, if it returns the vehicle to proper working order. Mr. Felices said that the DMV has approximately \$12,500 per fiscal year to fund its covert operations. He said that the agency does not have enough money to shorten the useful life of a set-up vehicle.

Three-Year Period of Determining Violations

The station owners and inspectors said that designating three years as the time during which subsequent fines might lead to loss of license is too long. The station owners are also responsible for the actions of the inspectors in their employ, according to NAC 445B.4985. The same number of violations within the three-year period could lead to loss of their licenses as station operators. They have requested that the time period be shortened.

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Mr. Felices said that the designation of three years during which violations accumulate toward increased fines or loss of license is not tied to any federal regulation. He said that it would be possible to change this state regulation.

Cumulative Liability of the station owner for violations incurred by inspectors

Both federal (40 CFR 51.364) and state (NAC 445B.4985) regulations hold the station owners responsible for inspector performance. Some station owners own and operate a number of inspection stations and employ many emission inspectors. Any violations received by the employees are aggregated toward the station owners' total number of violations within that three-year period. Both the station owners and the DMV said that the number for which the station owner can be held responsible might accumulate quickly under certain circumstances.

Statistics on Administrative Actions Imposed on Emission Stations and Inspectors Statewide

In addition, I have obtained from the DMV a statewide tally of the number of citations and administrative fines assessed thus far in Fiscal Year 2002. Although the number of authorized inspection stations and approved inspectors varies somewhat over time, there are approximately 379 authorized inspection stations and 1,150 approved inspectors in Nevada. The number of administrative actions affecting these station owners and inspectors is summarized in the table below.

Administrative Action	Notice of Violation: Order to Cease (1 st offense)		Administrative Fines Imposed (2 nd or more offenses)	
	Number	Percentage	Number	Percentage
Emission Station Owners (379)	32	8.0%	3	0.8%
Emission Inspectors (1,150)	102	8.9%	102	8.9%

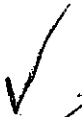
POSSIBLE COURSES OF ACTION

In reviewing the various issues raised by your constituents and the responses provided by the DMV, it would appear that these would most likely be addressed administratively rather than through legislation to amend the *Nevada Revised Statutes*. Given the nature of the concerns, however, you might consider one or all of the following courses of action.

1. A personal meeting with the Director of the Department of Motor Vehicles, or his representatives, might be requested. You might include several of your constituents. At such a meeting, changes in administrative procedures could be discussed.

2. A letter to Governor Kenny C. Guinn and the DMV, outlining your concerns, might be sent. You might ask the Governor to review the matter personally and ask him to take appropriate action. One such action would be to recommend an increase to the budget for compliance enforcement so that the DMV could use the covert operations for instructive purposes by identifying a covert vehicle immediately upon completion of the emissions inspection. This would not preclude the issuing of a fine for the violation, but it would address the concerns of inspectors and station owners that they cannot defend themselves in an administrative hearing.
3. An agenda item next session for the Senate Committee on Natural Resources by which the DMV administrators of the program would be asked to appear to explain the implementation of the program may be an option to consider. This would give you and other interested legislators an opportunity to discuss this issue in a public meeting, one that could be attended by any interested inspection station owners.
4. Legislation to amend NRS 445B.790 might be drafted. This section authorizes the DMV to "establish procedures for inspection of authorized inspection stations." Since the DMV is not directed to promulgate rules in this statute, the rulemaking processes under the Nevada Administrative Procedures Act are not triggered. Consequently, the internal policies governing the covert operations have not had a public hearing. Such legislation would enable the station owners and other interested members of the public to react to the whole procedure.

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CONCLUSION

I hope this information has been useful to you. If you wish to pursue any of the suggested courses of action, please do not hesitate to contact me for assistance. In addition, I will be happy to follow this issue with the Department of Motor Vehicles for you.

Please note that I will be in Las Vegas on May 21. Although I am attending a meeting in the morning, I will be available to meet with you at any time in the afternoon. If you are interested in exploring any of these options or other actions, please let me know. I will have office hours at the Research Division Office in the Grant Sawyer Building that afternoon. I can be reached at 775/684-6815, the telephone number for the Carson City Research Division Office, or at 702/486-2800, the number for the Legislative Counsel Bureau in Las Vegas.

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FAX COVER SHEET

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DATE: <i>05-30-02</i>	TIME: <i>4:55 PM</i>
NUMBER OF PAGES TO FOLLOW: <i>5</i>	

MESSAGE

Peter - Attached is the copy of a memo to Senator Mike Schneider on Smog inspection Stations. I am faxing as per his direction. Call me with questions. I would be interested in how the meeting goes tonight. — Carol