



STATE OF NORTH CAROLINA

SPECIAL REVIEW

N. C. DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

RALEIGH, NORTH CAROLINA

APRIL 1997

OFFICE OF THE STATE AUDITOR

RALPH CAMPBELL, JR.

STATE AUDITOR

SPECIAL REVIEW

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LETTER OF TRANSMITTAL

April 21, 1997

The Honorable James B. Hunt, Jr., Governor
Mrs. Janice H. Faulkner, Commissioner
Division of Motor Vehicles
Members of the North Carolina General Assembly

Ladies and Gentlemen:

Pursuant to General Statute §147-64.6(c)(16), we have completed our special review into allegations concerning the North Carolina Department of Transportation, Division of Motor Vehicles. The results of our review, along with recommendations for corrective actions, are contained in this report.

General Statute §147-64.6(c)(12) requires the State Auditor to provide the Governor, the Attorney General, and other appropriate officials with written notice of apparent instances of violations of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee. In accordance with that mandate, and our standard operating practice, we are providing copies of this special review to the Governor, the Attorney General, and other appropriate officials.

Respectfully submitted,

Ralph Campbell, Jr.
State Auditor

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OVERVIEW

In 1970, Congress passed the Clean Air Act (Act). Among other requirements, the Act requires states with significant air quality problems to file a State Implementation Plan (SIP) with the U.S. Environmental Protection Agency (EPA). The SIP describes the methods by which a state intends to overcome its air quality problem.

In 1977, the Act was amended. The 1977 amendment mandates a motor vehicle Inspection and Maintenance (I/M) program for areas with long term air quality problems. I/M programs are responsible for monitoring and testing the emission of pollutants from motor vehicles.

A SIP includes a description of the I/M program, statutory authority, program enforcement (including audits and penalty schedules), evaluation methods, and program resources (including funding sources, personnel, and equipment). North Carolina's SIP was prepared by the North Carolina Department of Environment, Health, and Natural Resources' (DEHNR) Division of Environmental Management's Air Quality Section.

The Inspection and Maintenance program (I/M) is one component of the SIP. Other components include restrictions on industry to keep air pollution within tolerable levels. Each component of the SIP receives "credits" from the EPA. The total credits from each component of the SIP represent a state's commitment to ensure compliance with air quality standards. If one SIP component such as I/M becomes ineffective in reducing

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mobile source air pollution, then a state must make-up the lost credits by tightening other air pollution regulations. Of course a greater regulatory burden on other air pollution sources such as industry, often leads to a greater economic burden.

Since passage of the Act, the EPA maintains oversight and policy development responsibility for I/M programs. Depending upon the severity of the problem, the EPA requires an area to establish either a “basic” or “enhanced” program. Moderate to marginal areas fall under the basic program requirement, while enhanced I/M programs are required for those areas with the worst air quality problems. I/M programs can be administered through either centralized or decentralized tests. Centralized tests are run by states or by a single contractor in an area while decentralized tests are conducted at privately owned, licensed facilities, such as commercial gasoline stations.

In 1990, the Act was amended again. The 1990 amendments to the Act specifically addressed I/M programs. Under this amendment, the EPA pursues strategies for achieving major emission reductions from transportation sources. States with the most polluted cities are facing a Clean Air Act mandate to reduce emissions 24 percent by the year 2000. I/M programs are considered an integral part of the effort to reduce mobile source air pollution.

Historically, the ozone and carbon monoxide levels in North Carolina have exceeded standards. Currently, nine North Carolina counties have I/M programs: Mecklenburg,

OVERVIEW (CONTINUED)

Wake, Forsyth, Guilford, Durham, Gaston, Cabarrus, Orange, and Union. Cars built for the model year 1975 and later are subject to testing. North Carolina currently has a basic I/M program which is administered through decentralized methods.

In North Carolina, a memorandum of understanding between the Department of Environment, Health, and Natural Resources' (DEHNR) Division of Environmental Management (DEM) and the Department Of Transportation's (DOT) Division of Motor Vehicles (DMV) established that North Carolina's I/M program "would be jointly administered by DEM and DMV" with specific responsibilities for both parties. Among other responsibilities, DMV licenses inspection stations, audits each station monthly, establishes and enforces penalties for improper inspection procedures at stations, including incorrect equipment maintenance, falsifying records, and failure to properly inspect. DMV also conducts covert surveillance on inspection stations and provides DEM with the results of monthly station audits and undercover activities. DEM's responsibilities include monitoring the ambient carbon monoxide and ozone in the program areas; determining program effectiveness; scheduling I/M program audits and other activities.

DMV's Enforcement Section has responsibility for I/M program administration. The Director of the Enforcement Section carries the military designation of Colonel. A Deputy Director, or Lieutenant Colonel and three Assistant Directors or Majors support the Colonel in managing the programs of the section. One of the Majors holds the

OVERVIEW (CONCLUDED)

working title of Emissions Program Manager. There are eight districts within the enforcement section. Each district supervisor carries the designation of Captain. Only four of the eight districts have I/M program responsibilities. In addition, all of the aforementioned persons and the I/M inspectors are sworn law enforcement officers. The Enforcement Section also employs two Hearing Officers.

The four districts with I/M program responsibilities have thirty-five DMV inspectors assigned to the program. These inspectors have regulatory and enforcement responsibility for over 5,000 mechanics employed by over 1,300 privately owned licensed facilities.

The Enforcement Section also employs non-law enforcement personnel who serve in administrative support positions. Administrative personnel maintain licensing and operational records for inspection stations and licensed mechanics.

INTRODUCTION

In July of 1988, the Environmental Protection Agency (EPA) conducted an audit of inspection stations in the Charlotte and Raleigh Inspection & Maintenance program areas. Audits at eight out of the thirteen inspection stations revealed that these eight stations conducted the inspection inaccurately or incompletely. The other five stations passed the tampered vehicle and issued a certificate of compliance incorrectly. The 1988 report also noted that the North Carolina Division of Motor Vehicles (DMV) management did not follow the penalty schedule. In response to this audit, DMV submitted a “10 point corrective action plan” to the EPA. The EPA conducted a “preliminary status check” of DMV’s corrective actions taken in response to the 1988 audit. The check revealed that “problems still existed in the program”, most notably the overt and covert audit programs, and a lack of enforcement action. In September of 1993, North Carolina submitted a revised State Implementation Plan (SIP) to address EPA I/M rule requirements. In August of 1994, North Carolina submitted a supplement to this SIP. This supplemental submission contained DMV’s responsibilities, including a detailed penalty schedule for stations found in violation. In August of 1995, the EPA conducted another audit; this time only in the Charlotte I/M program area. Similar to the previous audit, this audit was highly critical of North Carolina’s administration of its I/M program. EPA’s 1995 audit “revealed many problems continue to exist” since the previous audit. In November of 1996, the Deputy Secretary of Transportation and Acting DMV Commissioner requested that our office review DMV’s administration of the I/M program.

INTRODUCTION (CONCLUDED)

There were questions surrounding the penalty schedule and the enforcement of this schedule. The Deputy Secretary stated that his particular concerns are “enforcement methodology and the internal administrative appeals process.” He also requested that the North Carolina Attorney General render an advisory opinion regarding the administration of the program.

We used the following methods to conduct our special review:

1. Examination of Division of Motor Vehicle records.
2. Review of the State Implementation Plan (SIP).
3. Review of federal regulations.
4. Review of Environmental Protection Agency audits of the Inspection and Maintenance program.
5. Review of Division of Environmental Management audits of the Inspection and Maintenance program.
6. Interviews with employees of the Division of Motor Vehicles.
7. Interviews with employees of the EPA.
8. Interviews with employees of the DEHNR.
9. Interviews with others external to any of the above organizations.

This report presents the results of our special review conducted pursuant to G.S. §147-64.b(c)(16) rather than a financial audit. The office of the State Auditor reviews the Department of Transportation’s financial activities through its annual audit of the state’s Comprehensive Annual Financial Report.

FINDINGS AND RECOMMENDATIONS

1. DMV HAS NOT FULLY COMPLIED WITH THE REQUIREMENTS OF THE STATE IMPLEMENTATION PLAN SUBMITTED TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

External audit reports, internal records and interviews of federal and state regulators point to the ineffectiveness of North Carolina's I/M program.

The State Implementation Plan (SIP) submitted to the EPA in September 1993 indicated that only 69% - 80% of vehicles subject to emissions testing could be matched to I/M inspections. Federal regulations require a compliance rate of 95% for vehicles subject to I/M programs. An amended SIP submitted to the EPA in August 1994, outlines a program to link vehicle registration to emissions inspection. The objective of the program is to prevent a vehicle owner from renewing the vehicle registration if the vehicle has not been

inspected during the previous year. It was scheduled to begin in October 1996. As of February 1997, the registration denial program has not been implemented.

Audits performed by the EPA as well as the DEM have been highly critical of DMV's covert audit efforts associated with the I/M program. A covert audit is an undercover examination of I/M stations to ensure compliance with state regulations. In response to this criticism, the SIP outlined plans to obtain 50 vehicles for covert audit operations. Only 20 vehicles were actually put into operation for covert audits by DMV.

In the spring of 1996, a performance audit report on the DMV was presented to the Joint Legislative Commission on Governmental Operations. The audit was performed by MGT of America, a management consulting firm based in Florida. The following excerpts from

the report illustrate the tone of the findings. “*The EPA has limited tolerance for a poorly*

FINDINGS AND RECOMMENDATIONS (CONTINUED)

functioning program. The emissions program has not been a success at Enforcement. Despite the commitment of experienced Enforcement personnel, management and operational difficulties persist. The I/M Program is surrounded by an atmosphere of accusations and politics as various involved parties point fingers at each other. There is a very serious question as to whether a key environmental program is an appropriate mission for a law enforcement agency. Also, the state is now using senior law enforcement investigators to perform what is widely regarded as a regulatory or technical activity.”

As stated earlier, the EPA performed an audit of the North Carolina I/M program in August 1995 and released a report several months later. The following excerpts from the report illustrate the EPA’s frustration with North Carolina’s I/M program.

“Another disturbing trend noted was the long delay between the time the covert audit took place and the time official action, if any, occurred. It was also noted the penalty imposed, if done at all, was not the one required for the given infraction by the penalty schedule in the SIP. These factors, combined together, effectively undermine the effectiveness of the quality assurance and enforcement programs.”

The report also summarized its findings with respect to the SIP. *“The reasons stated above clearly indicate the program is not achieving the emission reduction credit that is assumed in the North Carolina I/M SIP. The current I/M program must either be improved to match what is required in the SIP or make up the loss of emission reduction credits from other sources.*

FINDINGS AND RECOMMENDATIONS (CONTINUED)

In response to the EPA audit report, a commitment was made by the DMV management to correct many of the deficiencies discovered during the audit. However, our review of DMV's activity throughout 1996 indicated none of the major deficiencies identified by the EPA in 1995, were corrected in 1996. Therefore, the SIP has not been fully implemented.

In numerous audit reports from the EPA, the DEM, and others, the problems identified above have been communicated to the DMV. Although the DMV management concurs with previous findings, they continually ignore the findings or fail to take corrective action. The DMV has yet to comply with the requirements of the SIP. This has placed the state in direct jeopardy of losing EPA credits which could directly affect the economy of North Carolina, e.g. restricted federal highway funding or tighter industry regulations.

RECOMMENDATION

We recommend that the findings from the most recent EPA and DEM audit reports be used as a basis for developing a corrective action plan that will result in full implementation of the SIP. The action plan should include milestones for correcting current deficiencies such as the implementation of the registration denial program and increasing the fleet of undercover vehicles. An examination of the covert audit program should also be undertaken to bring it up to the standard expected by the EPA. Finally, responsibility for implementation of the corrective action

FINDINGS AND RECOMMENDATIONS (CONTINUED)

plan should be assigned to specific management level personnel in order to ensure accountability for completion.

2. THE DEPARTMENT OF MOTOR VEHICLES (DMV) INCONSISTENTLY IMPOSED PENALTIES ON INSPECTION AND MAINTENANCE (I/M) STATIONS.

G.S. §20-183.8C lists the violations that are classified as Type I, Type II, or Type III. A Type I violation is considered serious and is a violation that directly affects the emission reduction benefits of the emissions inspection programs. A Type II violation is considered minor and reflects negligence or carelessness in conducting an emissions inspection or complying with emissions inspection requirements, but does not directly affect the emission reduction benefits of the emissions inspection program. A Type III violation is considered a technical violation that is minor.

G.S. §20-183.8B establishes the civil penalties against license holders and suspension or revocation of licenses for emissions violations:

- ◆ Type I - For a first or second violation by an emissions self-inspector or an emissions inspection station, the penalty is \$250 and suspension of the business license for six months. A third and subsequent violation within seven years results in a \$1,000 penalty and revocation of license for two years. A Type I violation by an emissions inspection mechanic results in a \$100 penalty and suspension of license for six months for the first or second violation and a third or subsequent violation within seven years has a \$250 penalty and revocation of the mechanic's license for two years.

- ◆ Type II - For a first or second violation by an emissions self-inspector or an emissions inspection station, the penalty is \$100. A third or subsequent violation within seven years results in a penalty of \$250 and suspension of

FINDINGS AND RECOMMENDATIONS (CONTINUED)

the business license for 90 days. A Type II violation by an emissions inspection mechanic is a \$50 penalty for the first or second violation. A third violation or subsequent violation within seven years by the mechanic carries a penalty of \$100 and a suspension of the mechanic's license for 90 days.

- ◆ Type III - The first and second violation results in a warning letter. Any subsequent violation within seven years results in a penalty of \$25.

Our initial examination of undercover inspections on I/M stations indicated inconsistencies in the imposition of penalties. We interviewed DMV inspectors who confirmed our initial perception and expressed concern over inequities in the system of penalty enforcement. For example, we were told of an I/M station whose license was suspended after one violation of a mechanic's failure to detect a missing catalytic converter on an undercover inspection. According to a DMV inspector, this particular owner, from the outset of his business, had constantly sought the inspector's input and advice on operating a station that was always in compliance with State laws. While we do not defend the mechanic's actions, we contrast that with what we were told of other stations whose mechanics failed on numerous occasions to detect a missing catalytic converter, but were allowed to continue operating for various reasons. EPA leaves the creation of a penalty schedule to a state's discretion. However, once the penalty schedule has been established, enforcement of the penalty schedule must be swift and equitable.

The DMV inspectors also informed us of covert investigation results sent to Raleigh headquarters for processing and never being heard of again. The inspectors had done their jobs by informing the stations of the violations and forthcoming penalties. However, nothing was done by the Raleigh headquarters. Thus, some stations for whatever reason

FINDINGS AND RECOMMENDATIONS (CONTINUED)

were not processed for violations that occurred. As we stated in the previous finding this was noted in the EPA audit.

G.S. §20-183.8D sets out the procedures for an administrative and judicial review for a person or station who is assessed a penalty or whose license is suspended or revoked. A written request for a hearing before the Commissioner must be made within ten days after the person receives written notice of the action. If the action was the suspension or revocation of a license that hearing must be held within 14 days after the Division receives the request. The Commissioner has delegated his authority to the Enforcement Division.

In our interviews with the two hearing officers, (one of whom is now retired) they expressed specific differences on the definitions of Type I and Type II violations. These different interpretations lead to some stations being heavily penalized while others received a lesser penalty for similar offenses. Thus, stations' penalties were governed in part by where the stations were located and who heard their appeal.

Additionally, it appears that the former Director's influence also affected the issue of unfairness and inconsistency. Several individuals expressed concern that the former Director attempted to or did influence the final disposition of cases on several occasions. One of the hearing officers stated that on occasion, the former Director had instructed him to change the penalties of cases on which he had ruled. For, example, we were told by this same hearing officer that the former Director instructed him to change the penalty imposed against a particular station. This station had a missing book of stickers, but

FINDINGS AND RECOMMENDATIONS (CONTINUED)

failed to file a police report that they were stolen. According to the hearing officer, there was no evidence that a burglary had occurred at the station. The hearing officer affirmed the penalty of the enforcement officer as prescribed in G.S. §20-183.8B.(d). However, one month later, the former Director reversed the decision and gave the station its license. The hearing officer states that he did not receive any information on the process that the former Director used to determine this decision. The former Director stated that he does not remember this specific case.

Lastly, DMV's enforcement section's lack of a clear interpretation of the General Statutes governing I/M station inspection violations also led to unfairness and inconsistency. We received a multitude of interpretations of what constitutes Type I and Type II violations from the employees within DMV enforcement. These various interpretations lead to confusion within the organization and a general lack of cohesiveness in implementing and enforcing the program. Several employees went to the Attorney General on an individual basis and asked for an informal opinion of the statute. However, the employees still held fast to their own interpretations.

RECOMMENDATION

DMV should consistently and swiftly enforce its penalty schedule in a fair and unbiased manner. DMV must develop a clear and concise interpretation of General Statutes §20-183.8A - 20-183.8E. Also, every person assigned to the I/M program must possess the same interpretation. DMV must develop a tracking system for covert/overt investigation results and eliminate bottlenecks within the system. Any change made by the

FINDINGS AND RECOMMENDATIONS (CONTINUED)

Director of Enforcement should be well documented as to the reasons and communicated to the hearing officer.

3. THE DEPARTMENT OF MOTOR VEHICLE'S INSPECTION AND MAINTENANCE PROGRAM LACKS CLEAR LEADERSHIP AND DIRECTION.

During the course of our investigation, we noted a definite lack of communication within the I/M program between those in the Raleigh headquarters and the field inspectors and their supervisors. No one in Raleigh assumed the responsibility of directing the program. The field inspectors and their supervisors told us that they rarely hear about the administration of the I/M program from those in the Raleigh headquarters. Thus, there was a lack of direction flowing from Raleigh to the DMV inspectors in the field offices. The Emissions Program Manager (Major) and the Emissions Program Coordinator (Lieutenant), the top two program administrators, stated they did not communicate much with the field officers. Both informed us that any decisions had to be approved by the former Director. The Major told us that the direct supervisors normally checked with the former Director about decisions concerning the I/M program. Others within enforcement also confirmed that the Director ran the program. However, the former Director told us that he relied upon the Major to take care of the detail work of running the I/M program. For example, the former Director scheduled the rotation of the undercover vehicles. His top two I/M officials, the Major and the Lieutenant told us they did not know the whereabouts of the undercover vehicles nor the rotation schedule of these vehicles.

Although the former Director was ultimately responsible for the program's direction, he failed, however, to review the EPA audits. He stated that he only read the Major's

FINDINGS AND RECOMMENDATIONS (CONTINUED)

response to the audit findings. We spoke with an official from DEM who told us that the Major and the Lieutenant would occasionally meet with him to make decisions regarding the program. However, sometime later, the DEM official was told that the former Director had overruled the decisions, without communicating with him.

RECOMMENDATION

DMV has recently appointed a new Enforcement Section Director. This new Director should clearly communicate the I/M program goals and objectives to all personnel and grant the Emissions Program Manager the authority to manage his assigned programs. With this authority, he should be held accountable for its success or failure. Further, the deputy director should be included in the management of the daily operation of the section.

4. LACKING ANY PROCEDURES FOR DOING SO, THE DEPARTMENT OF MOTOR VEHICLES (DMV) OVERTURNED THE SUSPENSION ORDERS OF SEVERAL EMISSIONS INSPECTION STATIONS.

In early 1996, DMV issued Type I violations for 84 stations in Mecklenburg, Cabarrus, Gaston and Union counties. We examined cases in which 49 I/M stations within these counties received a Type I violation. In all but four of the cases examined, the original order was downgraded from a Type I violation to a lesser Type II offense. Our examination revealed that the hearing officer initially affirmed the Type I penalty through a hearing process. However, no hearing was conducted to determine the downgrade of the original penalty. We found this to be inconsistent with DMV's established procedures. In

FINDINGS AND RECOMMENDATIONS (CONTINUED)

the original decisions, DMV inspectors presented evidence that was relevant to the case on behalf of the state at the hearing. However, these same inspectors were not called to present evidence when the cases were overturned. Instead, someone in the Raleigh Headquarters simply ordered the inspectors to return the licenses to the suspended stations. The inspectors were unaware of the process used to determine the final decision of returning the licenses.

We questioned several DMV Enforcement Section headquarters personnel. When asked who made the decision to downgrade the penalties for these particular cases, the former Enforcement Section Director (Director) stated “that call was made by me under the advice of the attorney general.” The former Director stated that there was public outcry against the suspension orders from “citizens, station owners, and the Association of Independent Garage Owners.”

In a meeting attended by the former Director, the Hearing Officers, and the Major, a different criteria was decided upon. The attendees of the meeting decided that intentionally passing a tampered vehicle would be a Type I violation and a carelessly negligent mechanic passing a tampered vehicle would be a Type II violation. The former Director told us that after this meeting all attendees agreed that the hearing officers would review the cases and see if the cases met this criteria of an intentional or a carelessly negligent violation of the statute. If the violation was not deemed to be intentional by the hearing officer, the hearing officer was to amend the original decision to a lesser penalty of a Type II violation.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

However, there was not a consensus among those who met with the former Director on how the penalties were to be handled. The Major who oversees the North Carolina emissions program disagreed with this new criteria because the former Director did not use any written guidelines in making this determination. He (the Major) interpreted a “tampered vehicle” as a Type I violation. He told us that he based this upon his interpretation of the EPA federal guidelines and his conversations with EPA officials.

We also talked with the hearing officers. One hearing officer told us that his opinion was that “the law had not been properly applied so he changed his rulings to comply with the state statutes.” The other hearing officer disagreed with the criteria. This hearing officer stated that “if the events leading up to the hearing determined that a Type I violation had occurred, then he did not have the authority to change the ruling.” Moreover, he stated that no one had informed him of the change in criteria for Type I and Type II violations.

This procedure and the lack of a cohesive explanation for it gives the appearance of arbitrarily changing suspension orders. In past audits, DMV has consistently been cited for similar action but has failed to address this finding with changes in their methods of operation.

In the EPA audit of 1995, EPA stated that DMV must follow its own penalty process and impose penalties and/or suspend licenses for the Type I violations as required by the SIP. EPA officials informed us that enforcement of the program is very important. EPA officials also told us that their agency requires six-month revocations for serious violations. The EPA does consider some of these violations to be serious.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

RECOMMENDATION

DMV enforcement should develop written procedures for documenting, providing evidence, or explaining decisions made by hearing officers. DMV must enforce the penalty schedule that was provided in the SIP submitted to the EPA. DMV should disseminate its penalty schedule to all I/M personnel and station owners and stress the importance of program enforcement.

5. THE ENFORCEMENT SECTION'S ORGANIZATIONAL STRUCTURE ADVERSELY AFFECTS THE ADMINISTRATION OF CIVIL PENALTIES.

The I/M procedures state that a mechanic must visually inspect the pollution control components of a vehicle. Failure to detect the absence or tampering of components indicates the inspection was not performed properly. In numerous covert audits, mechanics failed to detect the absence of pollution control equipment. Our review indicated that penalties varied greatly for violations with essentially the same factual circumstances even when an administrative hearing was held.

In many cases, a Type I violation (license revocation and monetary fine) was reduced to a monetary fine because it was a mechanic's or station's first violation. In other cases, inspection stations had licenses reinstated while the licenses of mechanics remained revoked. We found no statutory basis for discretionary action of this type. To the contrary, G.S. §20-183.8B states: "A Type I violation by an emissions inspector mechanic is considered a Type I violation by the station or self-inspector for whom the mechanic is employed."

FINDINGS AND RECOMMENDATIONS (CONTINUED)

One of the primary reasons for the inconsistencies noted above is the placement of the judicial function within the Enforcement Section of the DMV. Hearing officers responsible for reviewing enforcement decisions report to the Director of the Enforcement Section. This reporting relationship gives the Director the ability to influence the hearing officer's decisions. Direct inquiries of enforcement personnel revealed that the Director did in fact influence the final case decisions on a number of occasions during the past two years. An examination of numerous cases indicated that an explanation was neither given nor required for the amendment of license revocation orders following administrative hearings. The absence of an explanation for these amendments raises serious questions about the integrity of the administrative review process.

In effect, the judicial process was compromised by an organizational structure and administrative process that allowed such a high degree of discretionary interpretation of state and federal regulations.

The placement of an administrative hearing officer within the DMV Enforcement organization also appears to be inconsistent with the intent and spirit of the Administrative Procedure Act (APA) of the State of North Carolina (G.S. §150B). The APA establishes a uniform system of administrative rule-making and adjudication procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not performed by the same person in the administrative process. By placing an administrative hearing officer in a subordinate position to the Director of the Enforcement Section, we contend that the functions and

FINDINGS AND RECOMMENDATIONS (CONTINUED)

authority of investigation and adjudication are in effect, vested in the same individual. We believe the legislative intent of the APA was to prevent a State agency from having the authority to investigate, prosecute and adjudicate the same case.

We also found the reporting structure of the clerical support staff has adversely affected the I/M program. Currently, there are four clerical persons supporting the I/M program in the Raleigh headquarters. However, these individuals report to an Administrative Assistant who has nothing to do with the I/M program. The Major does not have the authority to direct their work flow, approve leave, etc. This structure has lead to numerous delays in processing the paperwork from field offices. The Major told us that on more than one occasion, he has looked up from his desk and seen key administrative support personnel leaving for the day without his prior knowledge.

RECOMMENDATION

At a minimum, we recommend that the Administrative Hearing Officers report directly to the Commissioner of the DMV. This reporting relationship would correspond with the statutory language which vests the responsibility for holding a hearing with the Commissioner. If the authority to hold a hearing is delegated to a subordinate, the organizational layers through which it is delegated should be minimized.

However, we recommend transferring the administrative hearing function to the North Carolina Office of Administrative Hearings. Legal action related to the I/M program deserves fair and impartial adjudication. We

FINDINGS AND RECOMMENDATIONS (CONTINUED)

believe that a separate judicial entity provides the greatest opportunity for fair and impartial decisions related to I/M program violations.

The I/M program clerical support staff must report to the Emissions Program Manager or his designated assistant. This would ensure he possesses the ability to control the work flow of the I/M program.

6. DMV HAS DELAYED ENFORCEMENT ACTION RELATED TO COVERT INVESTIGATIONS.

Our examination indicated that long delays have been associated with enforcement action related to I/M violations. We found that, in both 1995 and 1996 the average time associated with the processing of covert audit investigation reports was two to three months. In a number of cases, the investigative reports sent to Raleigh from the district offices simply disappeared. In other cases, no enforcement action was taken following the review of investigative reports. However, field personnel were never notified about the status of enforcement action.

The delays in Enforcement action have several causes. As noted earlier, different interpretations of statutory requirements led to significant delays. Operational inefficiencies such as the practice of sending investigative reports to an administrative support employee for initial review has also contributed to delays.

Federal regulations are very explicit about the timeliness of enforcement action related to I/M violations. Part 51.364 of Title 40 of the Code of Federal Regulations states: *Enforcement against licensed stations or contractors, and inspectors shall include swift,*

FINDINGS AND RECOMMENDATIONS (CONTINUED)

sure, effective and consistent penalties for violations of program requirements. As noted before, the 1995 EPA audit report specifically identifies the timeliness of enforcement action as an issue which requires improvement.

RECOMMENDATION

Operational inefficiencies have recently been addressed in an internal work flow study. Operational efficiency could be considerably improved if many of the recommendations from that study are implemented.

7. DMV LACKS A SYSTEM OF TRACKING INSPECTION STATION VIOLATIONS.

Enforcement does not have a structured mechanism for tracking investigative reports through the enforcement cycle. For example, when a field inspector writes a report and sends it to the office in Raleigh, he may or may not hear about the report again. Yet, the field inspector is required to report the violation to the mechanic and station. The inspector is often left to wonder about the disposition of the investigative report.

The absence of a violations database and tracking mechanism has also increased the administrative burden of the I/M support staff. Enforcement has not committed the resources to maintain such a database.

RECOMMENDATION

FINDINGS AND RECOMMENDATIONS (CONTINUED)

A statewide violations database should be established for the I/M program. Station and mechanic histories should be maintained. Access to this database would greatly facilitate swift and sure enforcement action against mechanics and stations. Furthermore, the tracking of mechanics by license number could enhance enforcement efforts. The effectiveness of the I/M program is directly proportional to the competence and integrity of the licensed mechanics.

8. TWO ADMINISTRATIVE SUPPORT EMPLOYEES COMPENSATED FROM I/M PROGRAM RECEIPTS DO NOT PERFORM I/M PROGRAM DUTIES.

Federal regulations require the establishment of a dedicated nonreverting fund to account for I/M program receipts and expenditures. North Carolina maintains its fund through the authority of GS 20-183.7. A portion of the program receipts support salary expenditures for administration of the I/M program.

There are four administrative support employees in the Enforcement section funded by I/M program receipts. However, the daily work of two of these four employees is unrelated to I/M program administration. One employee works in the Enforcement Section mailroom. The other employee provides administrative support for the Safety Inspection program.

RECOMMENDATION

All administrative support personnel whose compensation is based on I/M program receipts should perform I/M program work. Operational

FINDINGS AND RECOMMENDATIONS (CONTINUED)

inefficiencies identified earlier could be improved if I/M program receipts are utilized for I/M program administration.

9. DMV'S ENFORCEMENT SECTION ASSIGNED A STATE OWNED VEHICLE TO A DEPARTMENT OF JUSTICE ATTORNEY, BUT FAILED TO CHARGE A COMMUTING FEE FOR THE USE OF THE VEHICLE.

In 1993, the Enforcement Section began providing an unmarked vehicle for the senior Department of Justice Attorney assigned to the Division of Motor Vehicles. Our records indicate that over the three year period, he was given the use of three different vehicles at different times. Occasionally, the car was used by other individuals within the Department of Motor Vehicles. The unmarked vehicle was for the attorney's use in the performance of his duties. The attorney was told that the Enforcement Section needed him to be "on call" twenty-four hours a day, seven days a week. Therefore, the attorney used the vehicle to commute to and from work. Motor Fleet Management's Regulations state that "employees who routinely drive any state-owned vehicle between their home and work station shall reimburse the state for mileage. Reimbursement shall be made by payroll deduction. The amount of reimbursement shall approximate the benefit derived from the use of the vehicle as prescribed by federal law at a rate established by Motor Fleet Management and shall be for 20 days per month. Commuting privilege requires prior approval of MFM." (G.S. §143-341)

The attorney told us that he asked the Enforcement Section Director and Deputy Director if he needed to pay a commuting fee and was told no. We asked the Deputy Director

FINDINGS AND RECOMMENDATIONS (CONTINUED)

about this situation and the commuting fee policy. He told us that “we” (Enforcement)

FINDINGS AND RECOMMENDATIONS (CONCLUDED)

researched the situation. They compared their particular situation with other law enforcement situations, namely the State Bureau of Investigation (SBI) and the Highway Patrol. They then determined that the attorney should not have to pay a commuting fee. However, we could not find any statutory authorization for attorneys to drive vehicles without paying a commuting fee. Therefore, the Enforcement Section was in error in assigning a vehicle to the attorney and not charging a commuting fee. The attorney has since ceased using a state-owned vehicle for commuting purposes.

RECOMMENDATION

DMV must comply with the Motor Fleet Management regulations governing commuting use of state vehicles. DMV should assign vehicles only to authorized employees. In addition, law enforcement vehicles should be assigned to law enforcement personnel only.

CONCLUSION

Motor vehicle Inspection and Maintenance programs are designed to control air pollution in U.S. metropolitan areas. Poor management of Inspection and Maintenance programs compromise their ability to contribute to a healthier environment. As detailed throughout this report and previous audit reports on the Division of Motor Vehicles, the Division of Motor Vehicles has been unable to operate its Inspection and Maintenance program as designed. The continued inability to correct identified deficiencies may pose serious economic and health implications.

Under the Clean Air Act, the Environmental Protection Agency is authorized to impose sanctions on states which fail to operate their Inspection and Maintenance programs as designed. Sanctions may include:

- ◆ restriction of federal highway funding, which would lead to the delay or cancellation of major highway construction projects in the state; and
- ◆ imposition of a federal implementation plan.

North Carolina's Inspection and Maintenance program can operate more effectively if the deficiencies identified in this, and previous audit reports are corrected. In our opinion, the ability to correct these deficiencies and improve the program would be enhanced by separating the Inspection and Maintenance program from the Safety Inspection program and transferring the Inspection and Maintenance program to the Department of Environment, Health and Natural Resources. Not only would this place the Inspection and Maintenance program with other environmental programs, but it would also give it a

CONCLUSION (CONCLUDED)

fresh start. The Safety Inspection Program would remain under the direction and control of the Division of Motor Vehicles. Granting the Inspection and Maintenance program management authority to another state agency should not affect the general public. Individuals residing in counties subject to emission testing would still present their vehicles for a safety and emission inspection annually at a licensed inspection station.

During the course of considering these recommendations, the experience of other states may be helpful. For example, several states have had positive experiences with privatizing certain aspects of the Inspection and Maintenance program, such as data collection and processing and technical supervision and monitoring.

Regardless of whether the programs are realigned or privatized, their effectiveness is dependent on sound management. In addition, the publicity surrounding the recent problems in the program can only dilute the public's confidence in it. These issues must be addressed in order for the program to make a positive contribution to the state's health and economic future.

Exhibit A

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In accordance with G.S. § 147-64.5 and G.S. § 147-64.6(c)(14), copies of this report have been distributed to the public officials listed below. Additional copies are provided to other legislators, state officials, the press, and the general public upon request.

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April 21, 1997

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Exhibit A