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## Shop owners choke up over emissions-test violations / Weber-Morgan Health Department: High cost needed to stop problems

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OGDEN — What's the cost of clean air?

While customers pay a few bucks for vehicle emissions tests, stations can lose thousands of dollars for a single mistake.

Dave "Woody" Hanline, owner of Woodruff Auto Sales, 3896 N. U.S. 89, is facing either a six-month emissions-test suspension or a \$7,500 fine because the Weber-Morgan Health Department said one of his technicians switched a car in December to get a pass reading on emissions.

This isn't the first time a shop owner has butted heads with the health department.

Craig Buttars, owner of SPS American Car Care Center, 760 N. Harrisville Road, was given a choice between paying a \$17,000 fine or a six-month suspension more than two years ago after a technician switched a car to get a pass reading on a test.

Buttars said he didn't know it had happened until the health department told him. The fine was eventually lowered to \$10,000 after the health department placed a cap on the amount it could charge.

When three internal appeals with the health department were all denied, Buttars took it further.

He sued the health department, claiming it was violating both county and state regulations by charging that much. He also got a restraining order to stop them from shutting down his emissions-testing machine.

Buttars' lawsuit is based on a state implementation plan for the Weber County emissions department, which states fee settlements may be up to \$3,000.

While the state can bring counties into compliance if they are not implementing programs to bring air quality up to Environmental Protection Agency standards, the enforcement of the programs is a county matter, said Joe Thomas, manager of Mobile Source and Transportation for Utah.

The implementation plan is a reflection of county regulations, Thomas said. It's what the county promised to do in an emission program, he said.

In some cases, the county might have a different penalty schedule than the plan does, because the plan hasn't been updated.

Gary House, health department director, said the plan is a guidance document, but if the court decides otherwise, the county will be happy to comply. He said the department just tries to uphold the law.

"Our mandate and responsibility is to make sure businesses don't violate the law," he said.

Even if the plan were not in place, Buttars said, the county as enforcer should be able to charge only as much as a fine for a class B misdemeanor. He wants to know why the health department can charge as much as a first-degree felony for an emissions violation.

The lawsuit was tried in federal court more than six months ago, and Buttars is now waiting to find out whether the health department must lower the amount he has to pay.

#### Legal fees mount

Buttars said he never expected it to get this far and has spent more than double what his fine would have been to fight the county. That is money he won't be able to recover unless he wins the case.

In Hanline's case, he said the technician involved has been his employee for eight years without a problem and trusts he wasn't being dishonest.

However, Brian Cowan, health department program manager, said there is no doubt the car was switched and that Hanline is partially responsible by not putting in place a recommended secondary check system.

Hanline's final appeal June 19 was denied by a health department appeals board.

Hanline is now taking legal action against the health department as well. His first hearing is July 13 in district court, a necessary step to get a restraining order against the health department to allow him to continue testing emissions until the case has been decided.

Hanline's emissions- testing machine is currently shut down.

#### Machine monitor

All emissions-testing machines are networked to a health department system that notifies health department employees if a test looks suspicious.

When emissions technicians make a mistake or intentionally pass a car that failed, the health department is authorized to impose a penalty.

Certain violations warrant warnings for a first offense. Others require immediate suspension for the technician and sometimes the garage as well.

Past simple warnings, the station can choose to accept either a suspension of its emissions-testing license or enter into a consent agreement with the health department.

The consent agreement is essentially a fine, which is calculated by taking an average of how many emissions tests the station will do during the time suspended and multiplying that number by \$12.50, half of the maximum allowed price for an emissions test.

Buttars said once technician wages, time and building costs are factored in, the shop makes less than \$3 a test. He said the consent agreements are too harsh and unfairly punish the shop owners.

"They don't understand what \$5,000 is to a small business," Buttars said. "I'd have to do \$50,000 of work to pay a \$5,000 fine. That's at least a month's work for free."

#### Deterrent needed

Cowan said the county has to set a price that is a sufficient deterrent to ensure tests are done correctly or there would be no motivation to correct mistakes.

"I can sympathize with their feelings, but we still have station owners choosing to do fraudulent tests even knowing what the penalty is."

Cowan said shop owners can use a recommended program that would require a second sign-off on all tests. If the second system were in place, he said, there's a lot more room for leniency, because it shows the owner cares about accuracy.

From when the secondary checks allowance was instituted Feb. 25, 2008, to the end of the year, the health department found 27 fraudulent tests, Cowan said.

Of those, he said, nine resulted in both the technician and the garage being penalized. In the other 18 cases, only the technician was penalized because the garage could show it had the second check in place.

The technicians take a self-study course and pass an open-book test with an 80 percent minimum required to be emissions-certified, Cowan said.

#### Worries pile up

Hanline said he finds it frightening that an employee who holds a grudge could make three intentional errors on tests within a week, and because he doesn't have the checking system in place, the station's emissions license would be permanently revoked.

Hanline said he didn't use the system because he felt it took too much time to have a mechanic stop what he was working on to double-check an emissions test.

Many of Hanline's employees are worried about what a mistake might mean to them or their boss and don't plan to renew their emissions certification, he said.

Buttars is worried that after challenging the legality of the consent agreement price limits, the health department will do away with them entirely and allow only suspensions.

In a Board of Health meeting Nov. 26, 2007, health department director House said he would prefer not to use consent agreements but did because other emissions-testing counties allowed them.

Three other Utah counties are required to do emissions testing. Davis County has no cap on consent agreements.

Salt Lake County has a \$10,000 cap, but the fee will often be reduced by 50 percent depending on number of violations and cooperation of the station, said Richard Valentine, acting manager of the Bureau of Air Pollution and Control.

Utah County has a cap of \$3,000 and increases the percent of emissions revenue charged by numbers of violations, said Steve Alder, bureau director for Air Quality Programs.