

**WEBER-MORGAN BOARD OF HEALTH
MINUTES OF MEETING
February 27, 2012**

The Weber-Morgan Board of Health held their regular meeting on February 27, 2012 in the Health Department Auditorium at 477 23rd Street. The meeting was called to order at 4:00 p.m. with Jay Jenkins presiding.

BOARD MEMBERS PRESENT:

Jay Jenkins, Chair	Tina Kelley, Vice-Chair
Ken Johnson	Jamie Grandpre
Neil Garner	Rich Harris
Jan Zogmaister	Kerry Gibson
Dave Holmstrom	Craig Dearden

BOARD MEMBERS EXCUSED:

Frank Brown

STAFF MEMBERS PRESENT:

Gary House	Kay Larrison
Claudia Price	Louis Cooper
Colleen Jenson	Gwen Hadley
George Chino	Sondra Mitchell
Brian Cowan	Michelle Cooke
Scott Braeden	Elaine Wendt
Glen Kinney	Summer Day
Michela Gladwell	Laura Shoemaker

OTHERS PRESENT:

Chris Allred	Calvin Pack
Craig Buttars	Jerry Paskett
Paul Jensen	David Hanline
Rod Clendenin	Kevin Lott
John Savage	Neil Schultz
Chuck Gee	Steven Greer
Cheryl Greer	Alan Zundel
Burke Christensen	Steve Gale

Welcome – Jay Jenkins

Jay Jenkins calls the meeting to order at 4:00 p.m.

Motion to Enter Public Hearing – Jay Jenkins

A **MOTION** is made by **Rich Harris** and **SECONDED** to close the regular meeting of the Board of Health and enter into public hearing on the Motor Vehicle Inspection and Maintenance Program Regulation. The **MOTION** passes unanimously.

Motion Passes

**Public Hearing on Motor Vehicle Inspection and Maintenance
Program Regulation – Brian Cowan**

Public Hearing

Chris Allred explains that a hearing officer has been designated for the public hearing. All interested parties should be heard, but the Board can set a time limit. After the hearing, the Board will go back into their regular meeting. **Brian Cowan**, as the designated hearing officer, reviews the regulation and the three main areas of change: 1) new emissions testing equipment now in use for day to day operations, OBD free re-testing, the use of cameras when technicians are testing, and reporting smoking vehicles; 2) reciprocity with four emissions programs along the Wasatch Front that includes waivers, cut points for 1995 and older vehicles, and Appendix D (penalty schedule); and 3) general housekeeping to clean up terminology and layout without any major changes. Time for written comments on these changes ended at 4:00 today; there were none.

Calvin Pack, Pro-Tech Auto Service and Air Quality (I/M) Advisory Committee (IMAC) member, speaks about the interaction between the I/M staff and the IMAC, the new analyzers, and the IMAC’s review of regulations. **Rod Clendenin**, Rod’s Best Auto Care and IMAC member, addresses the new equipment and IMAC’s involvement, and of a shop owner who was prosecuted on a vehicle that passed testing. **Craig Buttars**, SPS Car Care, explains delayed response time for problems with equipment over President’s Day holiday, asks for accountability of Applus Tech. for the equipment, expresses approval of change in regulation on covert audits that removes one bad test with two subsequent good tests, and suggests using covert audits to keep technicians trained not to fine station owners. **Kevin Lott**, John Watson Chevrolet and IMAC member, speaks to cap on pricing and the \$2.50 per test stations now have to pay. He suggests the cap (\$25 maximum) and the new cameras be eliminated. **Jerry Paskett**, Roy Tunex and IMAC member, agrees with Mr. Lott about the price cap asking that Weber County be an open market, and says that the IMAC did not approve the cameras as part of the new equipment. He asks for clarification in the regulation of “certified technicians” vs. “inspectors” and “testers”, and for a copy of the department’s adjudicative process. **David Hanline**, Woodruff Auto, talks about a past fine, asks if any board members have read the contract (between the shops and Applus), and suggests the cameras are making everyone uncomfortable. **Neil Schultz**, B & R Auto, asks for involvement of the IMAC and written communication to ensure shop owners are together. **Steve Gail**, Terrace Auto Repair, explains frustration with the layout of their bays and camera placement; he suggests wireless equipment.

Motion to Leave Public Hearing and Enter Regular Meeting – Jay Jenkins

Motion Passes

A **MOTION** is made by **Jan Zogmaister** and **SECONDED** to close the public hearing and return to regular meeting of the Board of Health. The **MOTION** passes unanimously.

**Approval of Motor Vehicle Inspection and Maintenance Program
Regulation – Brian Cowan**

Motion Tabled

Brian Cowan addresses the Board asking they approve the regulation as revised. He explains that the IMAC had input on the changes - the options available and the steps taken; it is documented in the minutes of the meeting. The three choices when selecting Applus Technologies were to join Salt Lake Valley Health Department (SLVHD) on their request for proposal (RFP), do our own RFP, or extend the agreement with ESP for

services. The decision was made at the department level and the IMAC was informed of that decision. He explains that the software is not off the shelf but newly developed; beta testing began in December and implementation complete in February. There are snags and learning curves. Shops were told to keep analyzers on each night but learned they must be shut down. Much of this is frustrating when the old equipment could do things that the new equipment doesn't. The software is being updated and access to Applus and the WMHD staff on weekends, after hours and holidays is being evaluated. He explains that no penalty action is being taken right now unless violations are obvious which have not come up yet. The cameras were not part of the SLVHD's RFP but presented to the IMAC without negative feedback. Cameras represent a dual check on each test and supplements security; shops wanted that extra coverage and owners can now see whether technicians are doing what they should. Applus is working now on moving and adding cameras. Mr. Cowan explains that Applus provides technical support for the equipment and WMHD provides by-pass codes. There is an after-hours pager number for Applus with the program manager and they're working on a hot-line set up for calls. Right now they're available every day but Sunday. Calls are documented by type of problem and how each is addressed include response times. Continued weekend or extended hours is in negotiation. Mr. Cowan says they will make sure operators have someone to contact after hours; the old ESP equipment never had support over the last 11 years and they want to correct that. There is a learning curve. Discussion follows about use of cameras in SLVHD and whether to use them just for disciplinary action. Mr. Cowan states that cameras are a reasonable solution to find out what created the problem (violation) and fix it. They are good tools and provide extra security for the certification inventory. Most stations implemented a quality assurance program to demonstrate security; now there is a dual control system. If an operator has a problem, camera footage could be used as evidence and protect the shop owners. Mr. Cowan says the initial data shows the cameras are working with only a 15%-20% failure rate. Covert rates are the lowest ever. The cameras are resulting in better testing. He explains that the IMAC approved the reset for two good tests to wipe off one bad test in the last regulation change, which allows credit for good behavior. There is more discussion on formal mandatory training of technicians, open market fee change, and the \$2.50 fee charged to customers.

Tina Kelley states that only two speakers during the public hearing spoke in regards to the regulation; most is commentary on the new equipment. **Mr. Cowan** clarifies "certified" vs. "permitted" in the new regulation by saying it is consistent language within environmental health programs; food handlers are "permitted" vs. "certified". The adjudicative hearing process is not on the web site but is available. More discussion follows about approving the regulation today as is and clarification on use of cameras to be used as training or limited where applicable. **Chris Allred** says that another public hearing would be needed only if there were dramatic changes to the proposed regulation. **Brian Cowan** reviews the history of the IMAC; it's creation by the Board of Health and approval of membership. He says the Applus contract was reviewed by the IMAC but the decision was made by staff member to use SLVHD's RFP. If cameras are removed from the proposed regulation, levels of security will need to be added back in. Reciprocity with other emissions programs is the time crunch as the Division of Air Quality wants to add it to the standard implementation plan (SIP) now due to EPA. Cameras can be switched off in the software. Mr. Cowan says that SLVHD only uses cameras when there are problems but wishes they had them on all the time. He says there

is no intent to change cut points; there is a 1995 and older threshold. A **MOTION** is made by **Jan Zogmaister** and **SECONDED** to table the approval of the regulation until next month. The **MOTION** passes unanimously. Board members ask for an outline of what changes would occur in the regulation if cameras were removed, any IMAC recommendations on the comments, and the open market (maximum inspection) fee change. Keep the items separate so board members can consider each independently.

Approval of Minutes of January 23, 2012 – Jay Jenkins

Motion Passes

A **MOTION** is made by **Ken Johnson** and **SECONDED** to accept the minutes as completed. The **MOTION** passes unanimously.

Approval of 2012 Fee Schedule - Kay Larrison

Motion Passes

Kay Larrison explains that the fee schedule is presented to the Board every year as part of the budget cycle. There are no changes to fees from the prior year. There is discussion on the I/M maximum inspection fee (open market fee), whether there is need for a public hearing, and desire for IMAC feedback. A **MOTION** is made by **Kerry Gibson** and **SECONDED** to approve the fee schedule as presented. The **MOTION** passes unanimously.

2012 Budget Presentation – Kay Larrison

Information Only

Kay Larrison refers to the worksheet sent out showing 10 years of financial history for the health department. The budget is created in August, submitted in September and approved by the County Commissioners in December but has increased by \$158,000 since then because of tobacco, PREP, and diabetes grants. Even with new grants, revenue is down some from last year: WIC one-time infrastructure funding in 2011 and preparedness grant cut in 2012. Personnel costs make up 70% of the budget. We have 76 employees or 70 full-time equivalents; other expenses have remained constant with little fluctuations. Training and travel changes with requirements of grants or staff licensing; there are new training requirements for WIC this year. Supplies are general office, maintenance, telephone, and subscription costs. Building costs are maintenance, utilities, rent. Services combine grant requirements with Weber County administration fees and data processing fees. Insurance is the fee paid to the Utah County Indemnities Pool; the interlocal agreement was passed last month. Equipment covers projections for controlled assets and equipment. Capital Projects include estimates for remodeling the main building and any annex improvements. The ten year comparison shows the main building construction in 2004 and 2005, tax revenue adjustment and H1N1 in 2009, and annex planning and construction in 2010 and 2011. Fees dropped with the economy in 2008 but most programs holding steady. In 2003 we had 74 FTE's; in 2012 we have 70. We still serve the population of the two counties efficiently and effectively.

Legislative Update – Gary House

Information Only

Gary House reports that HB 362 pulls public health out of food handler testing and permitting to privatize it. There are two bills on emissions testing: HB 152 lengthens the period between testing, meaning fewer vehicles tested; HB 407 is a competing bill which makes new vehicles up to two years old exempt from emissions and safety inspections. HB 245 is a hooka bill that amends the Utah Indoor Clean Air Act and includes electronic cigarettes (e-cigs) and hooka bars which is the issue of lit tobacco vs. heated tobacco.

Appeal of B & R Auto – Neil Schultz

Decision Upheld

Chris Allred introduces the appeal by saying these rarely come to the Board of Health. An aggrieved party should exhaust all avenues of appeal before going to district court. They first seek an informal meeting with the health department but can go directly to an independent Hearing Officer to get the matter resolved. We offer the aggrieved party one more appeal to the Board of Health or they can go to district court. Mr. Allred says the Board is acting in a quasi-judicial capacity which is to determine if the action taken was correct or incorrect. This is a public meeting not a public hearing. If the Board wants to hear additional evidence, they can accept it but it is not generally taken under public comment. **Brian Cowan** explains that the appeal here is from a covert vehicle violation on October 14, 2011. The technician failed to inspect the vehicle properly and passed it when it should have failed. A notice was sent to B & R Auto that this was the fourth time a covert vehicle was passed improperly. Appendix D of the regulation says the station owner/operator is given a written warning and a three month suspension after three prior written warnings therefore the fourth violation means the three month suspension applies. A departmental conference was held November 30, 2011 where the regulation was explained and actions reviewed that resulted in the suspension. B & R Auto was offered a consent agreement based on the formula in the regulation which is 50% of the test revenue over three months, \$1,525. After the departmental conference, an appeal was submitted and a hearing with Bill Morris, independent Hearing Officer, scheduled January 3, 2012. Mr. Schultz failed to show. Mr. Morris ruled in accordance with the procedures and upheld the suspension. Mr. Schultz appealed to the Board of Health. **Neil Schultz** thanks for the Board and apologizes for missing the hearing. He forgot about the meeting and says he understands the hearing officer cannot change the regulation. He says his shop was in violation and that 3 of the technicians failed the test; none have been retrained. He has never had an audit problem other than covert audits. Two technicians no longer work for him. He says he did nothing wrong as a shop, he has dual testing in place, and supports clean air programs but it is the regulation that is the problem and he is asking for a change in the regulation or an exemption. He said he knew of the hearing and failed to show but did make an effort to contact the department the next day. There is discussion among board members about the ability to evaluate the circumstances but not change the regulation, and the independent role of the hearing officer. An exemption is not in the regulation. **Chris Allred** says options now are to evaluate if the violation took place or hear other witness testimony, or go through the public hearing process to change the regulation. **Neil Schultz** says the technician did fail the test, there is a problem with the regulation, and he now has 60 days to decide whether to file an appeal with district court or sign a consent agreement. There is discussion between Mr. Schultz and board members about subsequent audits, the responsibility of the employer for the employee, and technician training. A **MOTION** is made by **Tina Kelley** and **SECONDED** to deny the appeal of Mr. Schultz because the Hearing Officer upheld the action of the department and the owner admitted the violation. The **MOTION** passes unanimously. Further discussion surrounds the training of the technicians where the health department does the training but the owner is responsible for the violations along with a screening process for technicians.

Public Comment-

Calvin Pack says the covert penalty is the one most shops receive and suggests that covert cars be more visible, marked, and obvious to technicians. He speaks of ambient

air PVC hose, catalytic converter, gas cap, and broken valve off evac canister. **Ken Johnson** suggests giving minutes from the IMAC to board members. **Craig Buttars** thinks the covert program is a good program and thinks it should be used for training. He says technicians should be challenged and the problem is the regulation. He speaks of a case in federal court. He says the hearing officer needs to be able to make the decision on whether the violation was intentional and why it happened. He talks about the number of years between covert violations and asks when it resets to zero. He says the regulation is not perfect but has gotten better. **Jerry Paskett** reviews what it is the Board would like the IMAC to do at their next meeting: discuss the fee being included in the fee schedule vs. the regulation, talk about amending the covert resets, and get feedback on the cameras. He suggests that members of the IMAC contact a large number of the shop owners for feedback recognizing the time constraints in getting this done before the next board meeting. **Paul Jensen** asks about a technician that fails a covert vehicle at a shop down the street who then comes to his shop for a job. He suggests raising the test fees by \$2.50 to cover his new cost and taking that increase for public input since the cost gets passed onto the resident. He is concerned about the reach of “big brother” with the cameras and asks where that oversight ends. **Brian Cowan**, upon questioning by board members, explains that technician records are public record and can be reviewed by anyone with a GRAMA request. The health department has to put the technician in the system and will if they have a clear record and paid any penalties. If there are too many penalties the permit has already been revoked or suspended. He says the department trains all technicians to do the test; one time a year all technicians have to demonstrate they know how to do one. Once the technicians are in the station, the owner has to provide oversight. Any violation requires mandatory retraining. **Rod Clendenin** says a GRAMA request he made was going to cost hundreds of dollars for copies of IMAC tapes. The health department clarifies that he did have an opportunity to come into the department and listen to those tapes without charge.

Other Business

Ken Johnson informs board members that September 21st is the annual Utah Association of Local Boards of Health Symposium at Daniel’s Summit. The health department covers the cost to attend.

The meeting adjourns at 6:40 pm. Next meeting is scheduled for March 26, 2012 at 4:00 p.m.