



*To the Editor:*

*This is an article from a series of monthly columns by Environmental Law Specialist Dianne Saxe, one of the top 25 environmental lawyers in the world. These articles are available for publishing at no charge, provided Dr. Saxe is cited as the author. She can be contacted at (416) 962 5882 or [admin@envirolaw.com](mailto:admin@envirolaw.com). For more information, visit <http://envirolaw.com>.*

## **Ontario's Drive Clean Program**

Ontario's Drive Clean Program (DCP) requires cars and trucks to undergo regular emissions testing and maintenance. Vehicles that are in bad repair can emit an astonishingly high level of air pollutants, so this is an important program to protect public health, especially in urban areas. Vehicles must be tested when sold and when vehicle licenses are renewed. The tests are performed by certified establishments, most of which also offer necessary repairs. Drive Clean began in 1999, and now extends to all of southern Ontario. Its statutory authority is the Motor Vehicles Regulation (O.Reg 361/98) to the Environmental Protection Act.

There is a good overview of the program in Wikipedia- see [http://en.wikipedia.org/wiki/Ontario's\\_Drive\\_Clean](http://en.wikipedia.org/wiki/Ontario's_Drive_Clean)

Drive Clean has done a lot of good. According to the Ministry of the Environment, the program has conducted over 25 million tests on light duty vehicles (86% passed), over 1.2 million on heavy duty diesel vehicles (96% passed) and more than 82,000 tests on heavy duty non-diesel vehicles (77% passed). Those that did not pass were repaired, at least to some extent. The Ministry claims that this has avoided large amounts of air pollutants. See [http://www.ene.gov.on.ca/en/air/driveclean/about\\_programstats.php](http://www.ene.gov.on.ca/en/air/driveclean/about_programstats.php)

According to the Auditor General, Drive Clean is self funding. In 2002/03, the Ministry spent approximately \$28 million for programs and activities that relate directly to air quality; including at least \$18 million on Drive Clean. Drive Clean generated fee revenue of \$30.6 million.

### **The temptation of fraud**

Unfortunately, despite the health importance of accurate emission tests, fraud has been a significant problem. Many drivers and mechanics seem to succumb to the temptation to cheat rather than test and repair their vehicles. In 2004, the Auditor General reported that 3200 emissions certificates had each been presented for licence plate renewal more than five times! One certificate had been presented over 400 times, for different vehicles. As well, a more permissive (and less accurate) test for emissions level had been used inappropriately in at least 120,000 light-duty vehicles. The Auditor General also reported that emissions system repairs often seemed ineffective – in the sample he reviewed, ,

almost half the vehicles that had failed the emissions test, had even higher emissions after they were repaired!

The Ministry of the Environment hired an independent company to evaluate the Drive Clean program in 2005. It reported a series of common problems, including registration fraud (where an invalid pass certificate is used to support vehicles and/or renewals; also called cut-and-paste certificates) and clean-piping (where a known clean vehicle is tested to generate a fraudulent certificate for another vehicle suspected to be a high-emitter).

Since then, the Ministry has become more serious about investigation and prosecution of fraudsters. In 2006, Reg 361/98 was amended to make it an offence to create, distribute or use false inspection reports (s. 1.2). This can apply to an innocent buyer who relies upon a false certificate, unless s/he used due diligence and reasonably believed that the certificate was valid.

Criminal charges have been brought against 8 individuals – for forgery, uttering forged documents and fraud, all offenses contrary to the Criminal Code. Ministry of the Environment investigators have also conducted numerous prosecutions. In the most recent reported year (2004/05) there were 71 investigations (8 convictions) relating to registration fraud and 3 investigations (9 convictions, presumably some from an earlier investigations) for cut-and-paste certificate offences. There were 13 investigations (and 1 conviction) concerning “other” activities. Total fines imposed for the 18 convictions was a very modest \$86,300. The grand total of fines imposed from 2000/01 was \$198,800. As of February 2005, there were 200 open investigations (159 regarding cut-and-paste certificates) and 8 cases in the courts. Some more recent information is available at <http://www.ene.gov.on.ca/en/air/driveclean/news.php>.

### **What fines?**

Drive Clean fines are now becoming more significant. In the first few years, typical penalties might only have been \$750. Recently, most fines range from \$2000-\$8000, with some significantly higher. For example:

- Offences committed by accredited Drive Clean facilities attract higher penalties. In January 2007, R&D Auto Center Inc. was convicted on 4 counts of submitting false emissions inspection reports and 4 counts of permitting operation of a vehicle that did not meet emission standards – at \$5000/count, the fine totalled \$40,000 (+ 25% victim fine surcharge (VFS)). As well, the MOE terminated R&D’s accreditation for two instances of falsely issuing a pass report.
- Similarly, Baha Car Care and Tyre Centre Limited was fined \$9000, and its employee was personally fined \$4000.
- Higher fines are also levied against individuals in position of authority. For example, an automotive service advisor was fined \$20,000 +VFS, on conviction on 5 counts (3 for submitting false information to the MOE and 2 for permitting a vehicle that is not in compliance with emissions standards to operate).(Aug 22 2007 - <http://www.ene.gov.on.ca/en/news/2007/082201.php> ) In another case, an assistant

manager at a driver and vehicle licence office was fined \$15,000 (+VFS) following her guilty plea on 15 counts of providing the MOE with false information --she inputted false Drive Clean certificate numbers to complete vehicle renewal or transfer transactions. As well, she seems to have lost her job. (Nov 14 2007 - <http://www.ene.gov.on.ca/en/news/2007/111401.php> )

- False reports from car dealerships are also dealt with harshly. Recently, a used car dealership, Dynasty Auto Wholesale Inc. and its corporate director Mr. Javadbin were fined \$28,000 and \$8000, respectively (+VFS). The company sold a car that did not meet emissions standards; Mr. Javadbin used a false Drive Clean certificate to transfer registration, and gave that certificate to the purchaser. (<http://www.ene.gov.on.ca/en/news/2008/092302.php> )

Other fines include: June 2008, R. v. Petroff - \$2000; Younis (2006), Daley (2007) - \$5000, Kinney -\$3000 (2007), Etchells - \$3000 (2007), Fernandes - \$2500 (2007), Connolly -\$5000/count – (2007), Sandhu - \$8000 (2007 – cab company owner).

In addition, numerous Drive Clean Facilities have lost their accreditation because of such frauds. Currently, 75 DCF's are listed as having been terminated in the last three years. Thirteen DCF are listed as under suspension (some are indefinite).

The bottom line: Drive Clean is an important program for protecting human health. Fraud has been a significant problem, but the Ministry of the Environment has started to get serious about enforcement. Fines are probably still too low, but they're in the thousands of dollars and rising fast. Anyone tempted to cheat and use a false emission certificate for their next license renewal should think again – it's much cheaper to pay for the emission test than to be prosecuted.

---