

# LEGISLATIVE AUDIT DIVISION

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## MEMORANDUM

**TO:** Legislative Audit Committee Members  
**FROM:** Angie Grove, Deputy Legislative Auditor  
**CC:** Steve Bullock, Attorney General  
Tim Burton, Chief of Staff, Attorney General's Office  
Colonel Michael Tooley, Chief Administrator, Highway Patrol Division  
**DATE:** June 2012  
**RE:** Performance Audit Follow up (12SP-12): Montana Professional Tow Truck Act (orig. 09P-15)  
**ATTACHMENT:** Original Performance Audit Summary

### Introduction

In September 2010, we presented our performance audit addressing the Montana Professional Tow Truck Act. The audit contained nine recommendations addressed to the Department of Justice. In September 2011, we began gathering preliminary information from the department on their progress in implementing recommendations. This memo summarizes the results of our follow-up work, in addition to presenting background information.

### **Overview**

The Montana Highway Patrol (MHP) is responsible for administering provisions of the Montana Professional Tow Truck Act. The act governs the regulation of tow truck operators, and also provides for a rotation system for dispatching tow trucks to incidents on the state's highways. Our audit found the MHP is administering the rotation system fairly, but that improvements could be made in administration of rotation records, enforcement of rules for participating companies, and consumer protections. Of the nine recommendations we made to the department, five have been implemented, two have been partially implemented, and two have not been implemented.

### Background

Every year, thousands of incidents on Montana's roadways require dispatch of a tow truck to assist in clearing wrecked or disabled vehicles. The Montana Professional Tow Truck Act establishes requirements for tow truck operators and also provides for a rotational system used when tow trucks are dispatched. For many incidents, the MHP is the first agency responding to a scene and the agency administers a rotational system for tow trucks that it dispatches. To be eligible to participate in what is referred to as the tow truck rotational system; participating tow truck companies must meet equipment, inspections, insurance, and business standards. The act also guides how tow trucks are to be used and how incidents are to be handled. The Tow Truck Act establishes a semi-regulatory system for the state's tow

truck industry through these minimum operational standards, but participation in the rotational system is voluntary. The MHP relies on the cooperation of tow truck operators in clearing hazards from the roads, rather than contracting for this service.

### **Follow-Up Audit Findings**

#### **RECOMMENDATION #1**

**We recommend the department develop written policies, procedures, and data entry controls for dispatch staff to further improve transparency and accountability in the rotational system.**

#### **Implementation Status – Implemented**

In addition to changes in internal policies and procedures underway during our original audit, the department has recently made further enhancements to data entry procedures for its dispatch system. These changes addressed certain data entry tasks during the dispatch process and automatically assigning tow trucks to incidents based on the rotation order assigned by the system. The effect of these changes should be to standardize the dispatch process for all incidents involving tow trucks and prevent situations where the rotation order is not followed accurately.

#### **RECOMMENDATION #2**

**We recommend the department expand oversight of the rotation system by ensuring adequate information is available for all calls for service, including from private answering services.**

#### **Implementation Status – Not Implemented**

The department has not implemented this recommendation. Although MHP district captains still maintain the ability to request information from private answering services, no changes have been made that would ensure this information is available in a standardized or consistent fashion.

#### **RECOMMENDATION #3**

**We recommend the department consolidate information systems and processes used for tracking insurance filings and recording inspections for the tow truck rotational system.**

#### **Implementation Status – Partially Implemented**

The department has made changes in the process used to collect and compile insurance filing and inspection data for tow truck operators, but has not implemented suggested changes in use of information systems for this purpose. Changes in the department's overall enforcement strategy have resulted in improvements in the tracking of insurance filing and inspections data. This information is now provided in a standardized format and is available on a more timely basis, providing greater assurance that records in the dispatch system are accurate and regularly updated. Because of additional costs associated with potential system upgrades, the department is not currently pursuing the option of integrating tow truck insurance and inspection data within the dispatch information system.

#### **RECOMMENDATION #4**

**We recommend the department formalize criteria for the construction of rotational areas, including a provision for periodic review.**

#### **Implementation Status – Implemented**

The MHP has developed and implemented a policy for determination of rotation area boundaries. This policy outlines the general criteria used in constructing rotation areas, establishes a process for revising boundaries, and requires the inclusion and notification of affected tow truck operators in the process of

developing/revising these boundaries. The new policy specifically assigns MHP district captains with responsibility for annually reviewing tow truck rotation area boundaries to ensure they accurately reflect the number of tow truck operators and other relevant circumstances. District captains were provided with additional training relating to tow truck rotation areas. Since the new policy has gone into effect, several changes have been made to revise the boundaries of existing tow truck rotation areas around the state.

#### **RECOMMENDATION #5**

**We recommend the department address the criteria for construction of large tow truck rotation areas to emphasize improved response times.**

#### **Implementation Status – Implemented**

This recommendation was implemented through passage of legislation during the 2011 session. House Bill 401 revised the Tow Truck Act to remove the requirement that rotation areas for large tow trucks include at least the entire county in which an operator is located. Removing this requirement means the MHP can now construct large tow truck rotation areas based on the ability of operators to respond in a timely fashion. The MHP has already made some changes in boundaries for large tow truck rotation areas and is actively considering making additional changes.

#### **RECOMMENDATION #6**

**We recommend the department develop an enforcement strategy to ensure increased tow truck operator compliance with the Tow Truck Act.**

#### **Implementation Status – Implemented**

The department has made several changes over the past year to improve enforcement of the Tow Truck Act. These changes have involved both revisions to MHP procedures and revisions in statutory authority. The department has updated and standardized the documentation and procedures used by MHP troopers during inspections of tow trucks and the business locations of tow truck operators. During the 2011 legislative session, passage of House Bill 253 also made some significant changes in the standards and requirements included in the Tow Truck Act. The changes included in the bill addressed business requirements for tow truck operators participating in the rotation system. Among these changes, clarification was included to address situations where one tow truck operator was able to hold multiple rotation spots by using separate business names. Following passage of the legislation, the department proposed and adopted administrative rule amendments to implement the new requirements. Enforcement of the new business requirements began towards the end of 2011 with inspections of tow truck operators across the state.

#### **RECOMMENDATION #7**

**We recommend the department strengthen assurance of tow truck driver licensing and certification/experience by requiring submission of an active driver roster.**

#### **Implementation Status – Implemented**

The Department implemented this recommendation through amendments to its administrative rules to require tow truck operators requesting to be on the state rotation system to provide an active driver roster, a copy of the driver's towing certification or towing experience, and, a valid driver's license for the class of vehicle operated. Submission of the active driver roster is now a condition for receiving a letter of appointment from the MHP to participate in the rotation system. The MHP currently has no plans to use the driver roster information to actively check on the backgrounds of tow truck drivers i.e. to run cross-checks against driver licensing databases or criminal records. The driver roster will only be used to follow-up on specific issues where there are concerns about a driver or tow truck operator.

**RECOMMENDATION #8**

**We recommend the department improve the tow truck inspection process by:**

- A. Revising administrative rules to allow for greater flexibility in the timing of inspections.**
- B. Using the Computer Aided Dispatch system as a centralized source for inspection data.**

**Implementation Status – Partially Implemented**

The department implemented the first part of this recommendation through amendments to its administrative rules extending the time period during which inspections of tow truck operators may take place. Tow truck operators and MHP troopers now have a three-month time period to schedule the necessary inspections. Our original audit work suggested moving to a year-round inspection timetable, which the department did not view as an appropriate option. A three-month inspection period does, however, provide for greater flexibility in the timing of inspections. The second part of this recommendation has not been implemented by the department. As discussed under recommendation # 2 above, additional costs associated with dispatch system upgrades means the department is not currently pursuing these opportunities.

**RECOMMENDATION #9**

**We recommend the department require tow truck service rates to be submitted to the Montana Highway Patrol as part of the annual inspection process and to be made available to the Tow Truck Complaint Resolution Committee.**

**Implementation Status – Not Implemented**

The department proposed amendments to its administrative rules to address this recommendation, but encountered widespread opposition from the tow truck industry to changes that would make tow truck service rates available for the purposes of resolving consumer complaints. Due to this opposition, the department withdrew its proposed rule amendments and does not plan to pursue the issue further.

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