

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the STAR Certificate
Invalidation of:

ZEYNLE A HOSAFICI, Owner
dba **ZEES SMOG**,

Respondent.

Case No. IN 2014 15017

OAH No. 2014100800

ADOPTION OF PROPOSED DECISION BY OPERATION OF LAW

No action having been taken on the attached Proposed Decision, the attached decision of the Administrative Law Judge in the above-referenced matter is adopted by operation of law 100 days from the date the Order of Non-Adoption of Proposed Decision was issued, pursuant to Government Code section 11517(c)(2).

THEREFORE, the attached Proposed Decision of the Administrative Law Judge was adopted on June 5, 2015 by operation of law.

DATED:

June 11, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the STAR Certification
Invalidation Against:

ZEYNEL A. HOSAFICI, Owner
dba ZEES SMOG

Respondent.

Case No. IN 2014 15017

OAH No. 2014100800

PROPOSED DECISION

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter on January 15, 2015, in Irvine, California.

David E. Hausfeld, Deputy Attorney General, represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California.

Respondent Zeynel A. Hosafci represented himself.

The matter was submitted on January 15, 2015.

FACTUAL FINDINGS

1. Petitioner brought the Petition in his official capacity.
2. The Notice of STAR certificate invalidation, dated May 13, 2014, was issued to Respondent by an authorized representative of the Bureau. Respondent appealed the invalidation by a request dated May 21, 2014.
3. In 1999, the Bureau issued Automotive Repair Dealer Registration Number ARD 206560 (registration) to Respondent, doing business as Zees Smog. The registration was in full force and effect at all times relevant herein and will expire on December 31, 2015, unless renewed. The license has no disciplinary history.

4. In 2000, the Bureau issued Smog Check Test Only Station License Number TC 206560 (station license) to Respondent. The station license was in full force and effect at all times relevant herein and will expire on December 31, 2015, unless renewed.

5. On July 23, 2013, the Bureau certified Zees Smog as a STAR station. This meant that Respondent's station was authorized to inspect and certify "directed vehicles" pursuant to Health and Safety Code section 44010.5, and vehicles identified as gross polluters pursuant to Health and Safety Code section 44014.

6. The facts and circumstances leading to the notice of invalidation occurred on February 3, 2014. Respondent issued a certificate of compliance to a Bureau undercover vehicle with a missing pulsed secondary air injection system. The Bureau subsequently cited and fined Respondent for violating Health and Safety Code section 44032.

7. Respondent testified at the hearing. He acknowledged that he did not catch the missing system on the undercover car, and apologized for his mistake. He explained that he has been in business for 15 years and has never before or since been cited for any violations. He explained that he suffers from emphysema and that he is a supporter of the STAR program. He also explained that approximately 80 percent of his business comes from customers who require inspections from STAR-certified stations, and that revocation of his STAR certificate would bankrupt his business and financially cripple his family.

LEGAL CONCLUSIONS

1. Under California Code of Regulations, title 16, section 3392.5.1, subdivision (a)(1), the Bureau may invalidate the certification of a STAR station if "The STAR station, manager, or any licensed technician employed by the station receives an order of suspension, a probationary order, or a citation that is final and non-appealable for violation of any of the following sections: 44012, 44015 (a) and (b), 44015.5, 44016, and 44032 of the Health and Safety Code; and 3340.15 (a), 3340.16 (a) and (b), 3340.16.5 (a) and (b), 3340.17, 3340.30 (a), 3340.35, 3340.41 (b), 3340.41 (c), 3340.42, 3340.42.2, and 3340.45 of Division 33, Title 16, California Code of Regulations."

2. Cause exists to uphold the invalidation of Respondent's STAR station certificate under California Code of Regulations, title 16, section 3392.5.1, subdivision (a)(1), in that Respondent received a citation for violating Health and Safety Code section 44032, as set forth in Factual Finding 5.

3. Among the requirements for a station to receive a STAR certification are that it cannot have received a citation, or employ a technician who has received a citation, for certain violations within the year prior to issuance of the certificate, and there can be no license suspensions or probations within the prior three years. (Cal. Code Regs., tit. 16, § 3392.3.1.) After certification, STAR certified stations must continue to meet criteria

concerning the absence of citations, suspensions and probations. (Cal. Code Regs., tit. 16, § 3392.4, subd. (a).)

4. The regulations relating to the STAR certification program refer to invalidation, with no other options. Accordingly, Respondent's STAR certificate must be invalidated.

ORDER

The STAR certificate of Respondent Zeynel A. Hosafci, doing business as Zees Smog, is invalidated.

Dated: February 17, 2015


AMY YERKEY
Administrative Law Judge
Office of Administrative Hearings