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

In the Matter of the Accusation Against:  
**RODNEY THEODORE OVRID**  
**P.O. Box 1242**  
**Littlerock, CA 93543**  
**Advanced Emission Specialist Technician**  
**License No. EA 38166**  
  
Respondent.

Case No. 79/14-113

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 8, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/14-113 against Rodney Theodore Ovrud (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. In or about 1996, the Bureau of Automotive Repair (Bureau) issued Advanced Emission Specialist Technician License No. EA 38166 to Respondent. The Advanced Emission Specialist Technician License expired on June 30, 2013, and has not been renewed. Upon timely renewal of the license, the license will be redesignated as EO 038166 and/or EI 038166.<sup>1</sup>

<sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced

(continued...)

1           3.     On or about April 11, 2014, Respondent was served by Certified and First Class Mail  
2 copies of the Accusation No. 79/14-113, Statement to Respondent, Notice of Defense, Request  
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
5 section 136, is required to be reported and maintained with the Bureau. Respondent's address of  
6 record was and is: P.O. Box 1242, Littlerock, CA 93543.

7           4.     Service of the Accusation was effective as a matter of law under the provisions of  
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
9 124.

10          5.     On or about April 23, 2014, the aforementioned documents were returned by the U.S.  
11 Postal Service marked "Addressee Unknown." The address on the documents was the same as  
12 the address on file with the Bureau. Respondent failed to maintain an updated address with the  
13 Bureau and the Bureau has made attempts to serve the Respondent at the address on file.  
14 Respondent has not made himself available for service and therefore, has not availed himself of  
15 his right to file a notice of defense and appear at hearing.

16          6.     Government Code section 11506 states, in pertinent part:

17               (c) The respondent shall be entitled to a hearing on the merits if the respondent  
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
19 of the accusation not expressly admitted. Failure to file a notice of defense shall  
20 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
21 may nevertheless grant a hearing.

22          7.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
23 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
24 79/14-113.

25          8.     California Government Code section 11520 states, in pertinent part:

26               (a) If the respondent either fails to file a notice of defense or to appear at the  
27 hearing, the agency may take action based upon the respondent's express admissions  
28 or upon other evidence and affidavits may be used as evidence without any notice to

(...continued)

Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog  
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 respondent.

2 9. Pursuant to its authority under Government Code section 11520, the Director after  
3 having reviewed the proof of service dated April 11, 2014, signed by Teresa Sutton, (and return  
4 envelopes) finds Respondent is in default. The Director will take action without further hearing  
5 and, based on Accusation, No. 79/14-113, proof of service and on the Affidavit of Bureau  
6 Representative Joseph B. Cheung, finds that the allegations in Accusation are true.

7 10. Taking official notice of its own internal records, pursuant to Business and  
8 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
9 and Enforcement is \$1207.50 as of April 24, 2014.

10 DETERMINATION OF ISSUES

11 1. Based on the foregoing findings of fact, Respondent Rodney Theodore Ovrud has  
12 subjected his Advanced Emission Specialist Technician License No. EA 38166 (and as  
13 redesignated upon timely renewal as EO 038166 and/or EI 038166) to discipline.

14 2. The agency has jurisdiction to adjudicate this case by default.

15 3. The Director of Consumer Affairs is authorized to revoke Respondent's Advanced  
16 Emission Specialist Technician License based upon the following violations alleged in the  
17 Accusation which are supported by the evidence contained in the affidavit of Bureau  
18 Representative Joseph B. Cheung in this case:

19 a. Respondent Ovrud has subjected his advanced emission specialist technician license  
20 to discipline pursuant to Health and Safety Code sections 44050, subdivision (e), and 44045.6,  
21 and California Code of Regulations ("CCR"), title 16, section 3320.24 subsection (d) in that on  
22 or about August 18, 2011, the Bureau issued Citation No. M2010-1352 to Respondent Ovrud  
23 against his Advanced Emissions Specialist Technician license for violations of Health and Safety  
24 Code section 44032, (Qualified technicians shall perform tests of emission control systems and  
25 devices in accordance with section 44012 of the Health and Safety Code ) and California Code of  
26 Regulations, title 16, section 3340.30 subsection (a), (qualified technicians shall inspect, test and  
27 repair vehicles in accordance with section 44012 of the Health and Safety Code). On or about  
28 July 23, 2010, the Bureau served Respondent with the citation. The Bureau ordered Respondent

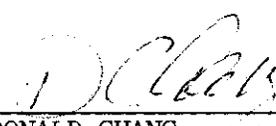
1 Ovrud to attend a 16 hour training course with proof of completion submitted to the Bureau within  
2 30 days of receipt of the Citation. Respondent Ovrud timely appealed the citation and a hearing  
3 took place on October 12, 2011. An adopted decision reduced the mandated training from 16  
4 hours to 8 hours. A petition for reconsideration was filed by Respondent and denied by the  
5 Director on October 16, 2013. The Director's decision became effective on October 18, 2013. To  
6 date, Respondent Ovrud has failed to submit to the Bureau proof of completion of the 8 hour  
7 training course.

8 ORDER

9 IT IS SO ORDERED that Advanced Emission Specialist Technician License No. EA  
10 38166, (and as redesignated upon timely renewal as EO 038166 and/or EI 038166), heretofore  
11 issued to Respondent Rodney Theodore Ovrud, is revoked. Pursuant to Government Code section  
12 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be  
13 vacated and stating the grounds relied on within seven (7) days after service of the Decision on  
14 Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D.  
15 Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion  
16 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the  
17 statute.

18 This Decision shall become effective on August 14, 2014

19 It is so ORDERED July 24, 2014

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22 \_\_\_\_\_  
23 DONALD CHANG  
24 Assistant Chief Counsel  
25 Department of Consumer Affairs

26 51501169.DOC  
27 DOJ Matter ID: LA2014511492

28 Attachment:  
Exhibit A: Accusation

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

In the Matter of the Citation Against:

**LITTLE ROCK SMOG TEST ONLY,  
WALDER OMAR MARTINEZ QUEZADA,**  
Owner,

BAR Citation No. C2010-1351

OAH No. 2011030150

Respondent.

In the Matter of the Citation Against:

**RODNEY THEODORE OVRID**

BAR Citation No. M2010-1352

OAH No. 2011030151

Respondent.

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition for Reconsideration, which has been filed by respondent in the above-entitled matter, having been read and considered, and good cause for the granting of the petition not having been shown, the petition is hereby denied. Accordingly, the Decision shall remain effective on October 18, 2013.

IT IS SO ORDERED this 16th day of October, 2013.



DONALD CHANG  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

# Exhibit A

Accusation and Pleading Packet/Return Envelopes

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
4 State Bar No. 164015  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2520  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/14-113

13 **RODNEY THEODORE OVRID,**  
14 **P.O. Box 1242,**  
**Littlerock, CA 93543**

**ACCUSATION**

15 **Advanced Emission Specialist Technician License No. EA**  
16 **038166, (to be redesignated upon renewal as EO 038166**  
17 **and/or EI 038166)**

**SMOG CHECK**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity  
22 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

23 **Advanced Emission Specialist Technician License**

24 2. In or about 1996, the Bureau of Automotive Repair issued Advanced Emission  
25 Specialist Technician License Number EA 038166 to Rodney Theodore Ovrud ("Respondent  
26 Ovrud or Respondent"). The Advanced Emission Specialist Technician License expired on June  
27  
28

1 30, 2013, and has not been renewed. Upon timely renewal of the license, the license will be  
2 redesignated as EO 038166 and/or EI 038166.<sup>1</sup>

3 **JURISDICTION AND STATUTORY PROVISIONS**

4 3. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
5 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
6 the Motor Vehicle Inspection Program.

7 4. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
8 expiration or suspension of a license by operation of law, or by order or decision of the Director  
9 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
10 the Director of jurisdiction to proceed with disciplinary action.

11 5. Section 44045.6 of the Health and Safety Code states, in pertinent part:

12 “(c) The department may require remedial training at a certified training facility or may  
13 take disciplinary action, whichever the department determines to be the most appropriate, for any  
14 licensed technician who the department determines cannot perform inspections, testing, or repairs  
15 as required under the program. The failure to complete the remedial training when required by the  
16 department shall be a ground for revocation or suspension of a smog check technician's license  
17 under Section 44072.2.”

18 6. Section 44050 of the Health and Safety Code states, in pertinent part:

19 “(a) In addition to or in lieu of any other remedy or penalty, including,  
20 but not limited to, education, training, or an office conference, the department may  
21 issue a citation to a licensee, contractor, or fleet owner for a violation of the  
22 requirements of this chapter or a regulation adopted pursuant to this chapter. The  
23 citation may contain an order of abatement or the assessment of an administrative  
24 fine, or both.

25 (e) Failure to comply with an order of abatement or payment of an  
26 administrative fine issued by the department pursuant to this section is grounds for  
27 suspension or revocation of the license, or placing the license on probation.”

28 7. Section 44055 of the Health and Safety Code, subdivision (b) states, in pertinent part:

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26 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced  
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog  
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.



1 devices in accordance with section 44012 of the Health and Safety Code ) and California Code of  
2 Regulations, title 16, section 3340.30 subsection (a), (qualified technicians shall inspect, test and  
3 repair vehicles in accordance with section 44012 of the Health and Safety Code). On or about  
4 July 23, 2010, the Bureau served Respondent with the citation. The Bureau ordered Respondent  
5 Ovrud to attend a 16 hour training course with proof of completion submitted to the Bureau within  
6 30 days of receipt of the Citation. Respondent Ovrud timely appealed the citation and a hearing  
7 took place on October 12, 2011. An adopted decision reduced the mandated training from 16  
8 hours to 8 hours. A petition for reconsideration was filed by Respondent and denied by the  
9 Bureau on October 16, 2013. The Bureau's decision became effective on October 18, 2013. To  
10 date, Respondent Ovrud has failed to submit to the Bureau proof of completion of the 8 hour  
11 training course.

#### 12 OTHER MATTERS

13 13. Pursuant to Health & Saf. Code section 44072.8, if Respondent Ovrud's Advanced  
14 Emission Specialist Technician License currently designated as EA 038166 and as redesignated  
15 upon timely renewal as EO 038166 and/or EI 038166, is revoked or suspended, any additional  
16 license issued under this chapter in the name of said licensee may be likewise revoked or  
17 suspended by the director.

#### 18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
20 and that following the hearing, the Director of Consumer Affairs issue a decision:

21 1. Revoking or suspending Rodney Theodore Ovrud's Advanced Emission Specialist  
22 Technician License currently designated as EA 038166, and as redesignated upon timely renewal  
23 as EO 038166 and/or EI 038166;

24 2. Revoking or suspending any additional license issued under Chapter 5 of the Health  
25 and Safety Code in the name of Rodney Theodore Ovrud;

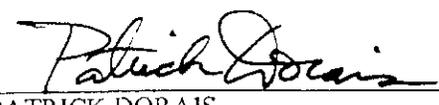
26 3. Ordering Rodney Theodore Ovrud to pay the Bureau of Automotive Repair the  
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
28 Professions Code section 125.3; and,

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4. Taking such other and further action as deemed necessary and proper.

DATED: April 8, 2014



PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

LA2014511492  
51487255.docx



RETURN TO  
USPS® MAIL CARRIER  
DETACH ALONG PERFORATION

2. Article Number



7196 9008 9111 1813 7741

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee)  Yes

1. Article Addressed to:

**Rodney Theodore Ovrud**  
P.O. Box 1242  
Little Rock, CA 93543

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

Agent  
 Addressee

**X**

D. Is delivery address different from item 1?  
If YES, enter delivery address below:

Yes  
 No

*LA2014511492 Acc packet  
Rodney Theodore Ovrud  
Gregory J. Salute*

Thank you for using Return Receipt Service

PS Form 3811, January 2005

Domestic Return Receipt

RECEIVED

2015 APR 21 AM 10:57

JC Figueroa

ATTORNEY GENERAL LOS ANGELES



U.S. POST



ZIP CODE  
02 1W  
08015E

RECEIVED

2014 APR 23 AM 10:47

ATTORNEY GENERAL LOS ANGELES

Gregory Salute, SDAG  
DEPARTMENT OF JUSTICE  
Office of the Attorney General  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013



- Not Deliverable as Addressed
- Unable to Forward
- Insufficient Postage
- Moved, Left No Address
- Undelivered  Refused
- Addressee not known
- No Such Person
- No Such Office
- No Such City
- Return to Post Office
- Postage Due

NIXIE

935437038-1N

04/19/14

RETURN TO SENDER  
UNABLE TO FORWARD  
UNABLE TO FORWARD  
RETURN TO SENDER



FIRST CLASS MAIL  
FIRST CLASS MAIL

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

In the Matter of the Citation Against:

LITTLEROCK SMOG TEST ONLY,  
WALDER OMAR MARTINEZ QUEZADA,  
Owner,

BAR Citation No. C2010-1351

OAH No. 2011030150

Respondent.

In the Matter of the Citation Against:

RODNEY THEODORE OVRID

BAR Citation No. M2010-1352

OAH No. 2011030151

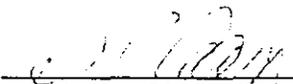
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective OCT 18 2013.

DATED: September 16, 2013

  
\_\_\_\_\_  
DONALD CHANG  
Assistant Chief Counsel  
Department of Consumer Affairs

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

In the Matter of the Citation Against:  LITTLEROCK SMOG TEST ONLY, WALDER OMAR MARTINEZ QUEZADA, Owner,  Respondent.	BAR Citation No. C2010-1351  OAH No. 2011030150
In the Matter of the Citation Against:  RODNEY THEODORE OVRID  Respondent.	BAR Citation No. M2010-1352  OAH No. 2011030151

PROPOSED DECISION

These matters, consolidated for hearing, were heard by Mark Harman, Administrative Law Judge, Office of Administrative Hearings, on October 12, 2011, in Lancaster, California.

Complainant was represented by Antonio Lopez, Jr., Deputy Attorney General.

Respondent Littlerock Smog Test Only (Respondent Littlerock) was represented by its owner, Walder Omar Martinez Quezada. Respondent Rodney Theodore Ovríd (Respondent Ovríd) represented himself.

Evidence was received and argument was presented. The matter was deemed submitted for decision on October 12, 2011.

FACTUAL FINDINGS

1. Complainant, an employee of the Bureau of Automotive Repair (Bureau), California Department of Consumer Affairs, issued the citations dated June 24, 2010, in his official capacity on behalf of the Bureau.

2a. Walder Omar Martinez Quezada is the owner of Respondent Littlerock. On dates not specified by the evidence, the Bureau issued to Respondent Littlerock an Automotive Repair Dealer registration, number ARD 258009, and a Smog Check, Test Only, Station license, number TC 258009. The license and registration were in effect at all times relevant herein.

2b. Respondent Ovrud is employed by Respondent Littlerock. On a date not specified by the evidence, the Bureau issued to Respondent Ovrud an Advanced Emission Specialist Technician license, number EA 058166.

3. On the morning of June 7, 2010, the Bureau conducted an undercover operation at Respondent Littlerock's business. The Bureau used a 1999 Toyota 4Runner, which contained an alteration, or "inducement," to the vehicle so that its emission control system would fail a properly administered test.

4. A Bureau technician removed the fuel evaporative control canister, or EVAP canister, a device that captures vapors from the fuel tank, with charcoal, when the vehicle is not running. When the vehicle is running, the captured vapors are sent to the engine for burning. The EVAP canister is a required component of the vehicle's emission control system. In addition to removing the EVAP canister, the technician removed several hoses connecting the EVAP canister, for example, to the air cleaner, to the vacuum switching valve (VSV) leading to the engine, and to the VSV leading to the On-Board Diagnostic vapor pressure sensor. The technician capped off the ports to this latter VSV, which can be seen in photographs taken by a Bureau employee during the undercover run. (Exhibit 3.) As altered, the vehicle's emission control system was not in proper working order and the vehicle could not pass the visual inspection portion of a proper smog check test.<sup>1</sup>

5. A Bureau employee using an assumed name drove the undercover vehicle to Respondent Littlerock's smog station and requested a smog test. Respondent Ovrud inspected and tested the vehicle's emission control system. Respondent Ovrud, however, did not identify the missing EVAP canister and connecting hoses/valves; instead, he erroneously determined that the EVAP canister was located underneath the vehicle. Respondent Ovrud made this mistake, in part, because he had seen in prior instances some of the EVAP canisters that were placed under the vehicles, closer to the fuel tanks, rather than in the engine compartments under the hoods. Respondent Ovrud maintained, and the Bureau did not dispute, that the Bureau's procedures would not have required him to look underneath the vehicle to see if the EVAP canister were present.

6. Respondent Ovrud believes that he performed the inspection properly. Respondent Ovrud demonstrated that his mistake of suspecting that the EVAP canister was underneath the vehicle was made in good faith. He offered the 2010 Edition of the Emission Control Systems Application, published by Motor, a manual describing the emission control

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<sup>1</sup> Although it could not pass the visual portion of the smog check test, the vehicle could perform normally in a road test, with no drivability or performance problems.

systems of all vehicles, which the Bureau considers an acceptable application guide for use in smog check stations. (Exhibit A.) According to this document, the EVAP canister is located at the rear of the vehicle on a 1999 Toyota 4Runner with a 2.7 liter engine. After he completed the inspection, Respondent Ovrud issued a Smog Check Vehicle Inspection Report (VIR) indicating that the vehicle had passed the visual inspection for the presence of fuel evaporative controls. The Bureau employee received the VIR, which stated that the vehicle had passed, and a smog certificate was issued.

7. Respondent did not perform a test of the vehicle's emission control systems (ECS) in accordance with statutory- and regulatory-mandated procedures, as he failed to uncover the missing EVAP canister. A smog check technician's first source of information for determining the required components of a vehicle's ECS is the manufacturer's vehicle emission control information label and the accompanying vacuum hose information label located under the hood of the vehicle. In some cases, these labels are missing or hard to read. In this matter, the vacuum hose information found under the hood was legible, but not entirely free from ambiguity;<sup>2</sup> however, it definitely identified the EVAP canister as being located near the front of the vehicle. If these labels cannot be used, the technician can consult one of the manuals, such as the one published by Motor.

8. Respondent Ovrud had received extensive training to qualify for his license and had been working on vehicles for 20 years at the time of the undercover run. He should have noticed that the EVAP canister was missing if he had performed a proper inspection. If a component is not readily visible, the technician would check for the subcomponents that make the system work, such as hoses, which could lead to the component itself. In this matter, there was an open space in the engine compartment big enough to hold a canister that was at least 120 (8 x 3 x 5) cubic inches. There was a VSV hanging in this space that had two caps. The Bureau's technician appeared to acknowledge during his testimony that the absence of the canister may not have been easy to recognize. Respondent Ovrud, however, should have been able to ascertain that the component was missing if he had properly used the information from the vehicle's labels, observed the empty space where the canister had been removed, and noted the presence of the caps, especially since Respondent Ovrud did not know, with absolute certainty, that the EVAP canister was located underneath the vehicle.

9. The Bureau previously cited Respondents for failure to perform a proper visual/functional check of emission control devices, just a few months before the undercover operation in this matter. The Bureau at that time fined Respondent Littlerock \$500 and ordered Respondent Ovrud to take an eight-hour retraining course. In this matter, the Bureau seeks a higher penalty level because this is a second violation. Respondent Ovrud is Respondent Littlerock's primary licensed technician. Respondents argued that a fine of \$1,500, plus a requirement for of a 16-hour training course, which may keep Respondent Littlerock from conducting business for two days, is financially onerous.

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<sup>2</sup> For example, the EVAC vacuum hose routing diagram does not show where the canister connects to the fuel tank.

## LEGAL CONCLUSIONS

1. Health and Safety Code section 44012 provides in pertinent part, as follows: "The test at the smog check stations shall be performed in accordance with the procedures prescribed by the department . . . and shall ensure all of the following: [¶] . . . [¶] (f) A visual or functional check is made of emission control devices specified by the department. . . . The visual or functional check shall be performed in accordance with procedures prescribed by the department."

2. California Code of Regulations, title 16, section 3340.30, subdivision (a), requires licensed smog check technicians to "inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article. (See Health & Saf. Code, § 44032.)"

3. Cause exists to sustain citation no. C2010-1351 against Respondent Littlerock under Health and Safety Code section 44012, in that its employee failed to perform properly, in accordance with the Bureau's procedures, the visual and functional checks that are required of a test of a vehicle's emission control systems, by reason of factual finding numbers 3 through 8.

4. Cause exists to sustain citation no. M2010-1352 against Respondent Ovrud under Health and Safety Code section 44032 and California Code of Regulations, title 16, section 3340.30, subdivision (a), in that he failed to perform properly, in accordance with the Bureau's procedures, the visual and functional checks that are required of a test of a vehicle's emission control systems, by reason of factual finding numbers 3 through 8.

5. Health and Safety Code section 44050, subdivision (b), sets forth factors to be considered when determining the appropriateness of the amount of an administrative fine. Respondent Ovrud has not engaged in fraudulent misconduct. He has demonstrated that he had a good faith belief, based on his extensive experience, that the EVAP canister on a 1999 Toyota 4Runner was located underneath the vehicle. The circumstances presented by the undercover operation are somewhat peculiar and may have been confusing for Respondent Ovrud. The fact that the EVAP canister was missing also may have been difficult for Respondent Ovrud to recognize. Nevertheless, the Bureau requires its licensees to exercise reasonable care when engaging in licensed activities. Respondent Ovrud, in this instance, has failed to act with the degree of care that is exercised by an ordinarily prudent licensed smog technician; however, Respondent Ovrud has demonstrated good faith and the Bureau has not demonstrated persistent violations, or a pattern or practice of misconduct.

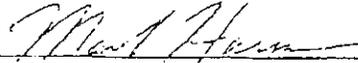
6. These mitigating factors warrant a downward departure from the recommended administrative fine and retraining requirement. Therefore, the administrative fine assessed against Respondent Littlerock shall be modified by reducing the amount of the fine from \$1,500 to \$750. The citation issued to Respondent Ovrud, prescribing that he complete a 16-hour training course, shall be modified to require Respondent Ovrud to complete only an eight-hour training course. As modified, these orders are fair, reasonable,

and appropriate under the Health and Safety Code for violations of emission control laws. It is recommended that the Bureau establish a reasonable payment plan to permit Respondent Littlerock to pay the civil penalty over a period of time, not to exceed six months.

ORDER

1. Citation number C2010-1351, issued to Respondent, Littlerock Smog Test Only, in the modified amount of \$750, is sustained.
2. Citation number M2010-1352, issued to Respondent, Rodney Theodore Ovrud, as modified to prescribe the completion of only an eight-hour retraining course, is sustained.

Dated: March 2, 2012

  
MARK HARMAN  
Administrative Law Judge  
Office of Administrative Hearings



EA 038166

**DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL**

(Separate Mailings)

Case Name: **RODNEY THEODORE OVRID**

No.: **79/14-113**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 11, 2014, I served the attached **STATEMENT TO RESPONDENT, ACCUSATION, NOTICE OF DEFENSE in duplicate, GOVERNMENT CODE SECTIONS 11507.5, 11507.6, 11507.7, REQUEST FOR DISCOVERY** by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT, ACCUSATION, NOTICE OF DEFENSE in duplicate, GOVERNMENT CODE SECTIONS 11507.5, 11507.6, 11507.7, REQUEST FOR DISCOVERY** was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

**Rodney Theodore Ovid  
P.O. Box 1242  
Littlerock, CA 93543  
Respondent**

**Certified Article Number**

**7196 9008 9111 1813 7741**

**SENDERS RECORD**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 11, 2014, at Los Angeles, California.

Teresa Sutton

Declarant



Signature

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