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

In the Matter of the First Amended Accusation Against: **ORANGEVALE SMOG** **BENJAMIN JUDAH HEMMER, Partner** **JOSEPH LACY HEMMER, Partner** Automotive Repair Dealer Registration No. ARD 253105 Smog Check, Test Only, Station License No. TC 253105 and **BENJAMIN JUDAH HEMMER** Advanced Emission Specialist Technician License No. EA 630550 and **MATTHEW ALBERT HEISCH** Advanced Emission Specialist Technician License No. EA 144523 Respondents.	Case No. 79/12-01 OAH No. 2011100773

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 August 7, 2012.

DATED: June 7, 2012

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the First Amended Accusation Against: ORANGEVALE SMOG; BENJAMIN JUDAH HEMMER, PARTNER; JOSEPH LACY HEMMER, PARTNER Automotive Repair Dealer Registration No. ARD 253105 Smog Check, Test Only, Station License No. TC 253105 and BENJAMIN JUDAH HEMMER Advanced Emission Specialist Technician License No. EA 630550 and MATTHEW ALBERT HEISCH Advanced Emission Specialist Technician License No. EA 144523 Respondents.	Case No. 79/12-01 OAH No. 2011100773

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on May 9, 2012, in Sacramento, California.

Kent D. Harris, Deputy Attorney General, represented Sherry Mehl (complainant), Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Respondents Benjamin Hemmer and Joseph Lacy Hemmer appeared on behalf of themselves and respondent Orangevale Smog. No one appeared for or on behalf of respondent Matthew Albert Heisch.[1]

The parties stipulated to a factual and legal basis for the proposed discipline, as well as the proposed discipline, specified below, and the record was closed and the matter submitted for decision on May 9, 2012.

SUMMARY

Complainant filed a First Amended Accusation seeking to discipline the automotive repair dealer registration and smog check, test only, station license issued to Orangevale Smog and the advance emission specialist technician license issued to Benjamin Judah Hemmer. At the hearing, the parties stipulated to a factual and legal basis for disciplining the registration and licenses, as well as the proposed discipline. Therefore, cause exists to discipline the registration and licenses, and each is revoked outright.

FACTUAL FINDINGS

I. *Applicable Registration and Licenses*

1. On January 11, 2008, the Department issued Automotive Repair Dealer Registration No. ARD 253105 (registration) to Benjamin Judah Hemmer and Joseph Lacy Hemmer, partners, dba Orangevale Smog. The registration expires November 30, 2012. On January 14, 2008, the Department issued Smog Check, Test Only, Station License No. TC 253105 (station license) to Messrs. Hemmer, partners, dba Orangevale Smog. The station license expires on November 30, 2012, unless renewed or revoked. On June 29, 2009, Orangevale Smog was issued Citation No. C09-1432 for failing to perform a visual/functional check during a smog inspection and issuing a certificate of compliance for a vehicle that was not properly tested. Orangevale Smog paid a $500 fine. On September 28, 2009, Orangevale Smog was issued Citation No. C2010-0256 for the same reasons, and paid a $1,000 fine. On July 22, 2010, Orangevale Smog was issued Citation No. C2010-1251 for the same reasons. The allegations in that citation were subsequently incorporated into the First Amended Accusation, and Citation No. C2010-1251 was dismissed.[2]

---

[1] This matter was remanded back to the Department for in-house default proceedings as to Mr. Heisch only. This Proposed Decision pertains to Orangevale Smog, Benjamin Judah Hemmer, and Joseph Lacy Hemmer only.

[2] The factual basis for Citation No. C2010-1251 also resulted in Citation No. M2010-1252 being issued to Matthew Albert Heisch. Both citations were dismissed at the same time.

2. On October 17, 2008, the Department issued Advanced Emission Specialist Technician License No. EA 630550 (technician's license) to Benjamin Judah Hemmer. The technician's license expires on May 31, 2012, unless renewed or revoked. On June 29, 2009, Mr. Hemmer was issued Citation No. M09-1433 for failing to perform a smog inspection in accordance with applicable laws and regulations. He attended an eight-hour training course in satisfaction of the citation.

II. *First Amended Accusation*

3. On February 9, 2012, complainant, acting solely in her official capacity as Chief of the Bureau, filed the First Amended Accusation seeking to discipline the registration, station license, and technician's license on the grounds that respondents committed numerous statutory and regulatory violations.

III. *Factual Basis for Discipline*

A. *Undercover Operation – March 29, 2010*

4. On March 29, 2010, an undercover operative working for the Bureau drove the Bureau's 1990 Chevrolet Corsica (Corsica) to Orangevale Smog and requested a smog inspection. The Corsica could not pass the visual portion of a smog inspection because the vehicle's positive crankcase ventilation (PCV) system was missing. The operative signed a work order and was given a copy prior to the smog inspection. Mr. Heisch performed the smog inspection and issued a Vehicle Inspection Report (VIR) showing the Corsica had passed inspection. He also issued Certificate of Compliance No. NS377311 electronically. The operative paid $68 for the smog inspection, was given a copy of the invoice and VIR, and left Orangevale Smog.

The following violations of law occurred in connection with the smog inspection:

a. Orangevale Smog made misleading statements which it knew, or through the exercise of reasonable care should have known, were untrue or misleading when it issued Certificate of Compliance NS377311 certifying that the Corsica was in compliance with applicable laws and regulations when, in fact, the vehicle was missing its PCV system.

b. Orangevale Smog committed fraud by issuing Certificate of Compliance No. NS377311 for the Corsica without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the public of the protection afforded by California's vehicle emissions laws.

c. Orangevale Smog failed to determine that all of the Corsica's emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures established by the Department.

d. Orangevale Smog failed to perform a visual inspection of the Corsica's

emission control devices in accordance with procedures prescribed by the Department.

e. Orangevale Smog issued Certificate of Compliance No. NS377311 without properly testing and inspecting the Corsica to determine if it was in compliance with Health and Safety Code section 44012.

f. Orangevale Smog issued Certificate of Compliance No. NS377311 without inspecting the Corsica in accordance with Health and Safety Code section 3340.42.

g. Orangevale Smog failed to conduct the required smog tests and inspections on the Corsica in accordance with the Bureau's specifications.

h. Orangevale Smog committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing Certificate of Compliance No. NS377311 without performing a bona fide inspection of the Corsica's emission control devices and system, thereby depriving the public of the protection afforded by California's vehicle emissions laws.

B. *Undercover Operation – August 26, 2010*

5. On August 26, 2010, an undercover operative working for the Bureau drove the Bureau's 1995 Chevrolet Impala (Impala) to Orangevale Smog and requested a smog inspection. The Impala could not pass the visual portion of a smog inspection because the vehicle's PCV system was missing. The operative signed a work order, but was not given a copy prior to the smog inspection. Nor was he given a written cost estimate for the smog inspection. Benjamin Hemmer performed the smog inspection and issued a VIR showing the Impala had passed inspection. He also issued Certificate of Compliance No. NS431311 electronically. The operative paid $68 for the smog inspection, was given a copy of the invoice and VIR, and left Orangevale Smog.

The following violations of law occurred in connection with the smog inspection:

a. Orangevale Smog made misleading statements which it knew, or through the exercise of reasonable care should have known, were untrue or misleading when it issued Certificate of Compliance NS431311 certifying that the Impala was in compliance with applicable laws and regulations when, in fact, the vehicle was missing its PCV system.

b. Orangevale Smog failed to provide the undercover operative with a copy of the work order as soon as he signed the document.

c. Orangevale Smog committed fraud by issuing Certificate of Compliance No. NS431311 for the Impala without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the public of the protection afforded by California's vehicle emissions laws.

d. Orangevale Smog failed to provide the undercover operative with a written cost estimate for parts and labor for a specific job regarding the smog inspection.

e. Orangevale Smog failed to determine that all of the Impala's emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures established by the Department.

f. Orangevale Smog failed to perform a visual inspection of the Impala's emission control devices in accordance with procedures prescribed by the Department.

g. Orangevale Smog issued Certificate of Compliance No. NS431311 without properly testing and inspecting the Impala to determine if it was in compliance with Health and Safety Code section 44012.

h. Orangevale Smog issued Certificate of Compliance No. NS431311 without inspecting the Impala in accordance with Health and Safety Code section 3340.42.

i. Orangevale Smog failed to conduct the required smog tests and inspections on the Impala in accordance with the Bureau's specifications.

j. Orangevale Smog committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing Certificate of Compliance No. NS431311 without performing a bona fide inspection of the Impala's emission control devices and system, thereby depriving the public of the protection afforded by California's vehicle emissions laws.

k. Benjamin Hemmer failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the Impala in accordance with tests procedures established by the Department.

l. Benjamin Hemmer failed to perform a visual inspection of the Impala's emission control devices in accordance with procedures prescribed by the Department.

m. Benjamin Hemmer failed to perform tests of the Impala's emission control devices and systems in accordance with Health and Safety Code section 44012.

n. Benjamin Hemmer failed to inspect and test the Impala in accordance with Health and Safety Code section 44012.

o. Benjamin Hemmer entered false information into the Emission Inspection System (EIS) for Certificate of Compliance No. NW431311 by entering "Pass" for the visual inspection of the PCV system when, in fact, that system was missing.

p. Benjamin Hemmer failed to conduct the required smog tests and inspections on the Impala in accordance with the Bureau's specifications.

q. Benjamin Hemmer committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing Certificate of Compliance No. NS431311 without performing a bona fide inspection of the Impala's emission control devices and system, thereby depriving the public of the protection afforded by California's vehicle emissions laws.

IV. *Costs of Investigation and Enforcement*

6. The parties stipulated that costs of prosecution and investigation in the amount of $8,383.83 are reasonable. They further stipulated that respondents are jointly and severally responsible for paying that amount to the Bureau, but their repayment obligation is stayed unless and until one or both of them applies or reapplies for any registration or license issued pursuant to the Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq), the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000 et seq), or any regulation adopted pursuant to either statutory provision.

V. *Effective Date of Final Order*

7. The parties stipulated that the effective date of the Final Order adopting this Proposed Decision will be August 7, 2012.

LEGAL CONCLUSIONS

I. *Cause for Discipline Based on the March 29, 2010 Undercover Operation*

A. *Misleading Statements*

1. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has made or authorized in any manner or by any means any written or oral statement which is untrue or misleading when the person knew, or through the exercise of reasonable care should have known, that the statement was untrue or misleading. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) Orangevale Smog made misleading statements which it knew, or through the exercise of reasonable care should have known, were untrue or misleading when it issued Certificate of Compliance NS377311 certifying that the Corsica was in compliance with applicable laws and regulations when, in fact, the vehicle was missing its PCV system. (Factual Finding 4a.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253105 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

B. *Fraud*

2. An automotive repair dealer registration may be disciplined when the dealer or a technician, employee, partner, officer, or member of the dealer has engaged in conduct that constitutes fraud. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).) Orangevale Smog committed

fraud by issuing Certificate of Compliance No. NS377311 for the Corsica without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the public of the protection afforded by California's vehicle emissions laws. (Factual Finding 4b.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253105 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

C. *Violations of the Motor Vehicle Inspection Program*

3. A smog check station license may be disciplined if the licensee, or any officer, partner, or director of the licensee, violates the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (a).) Cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 based on the following violations of the Motor Vehicle Inspection Program:

a. **Section 44012, subdivision (a)**: Health and Safety Code section 44012, subdivision (a), requires all smog inspections to be performed in accordance with procedures established by the Department. Orangevale Smog failed to determine that all of the Corsica's emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures established by the Department (Factual Finding 4c), in violation of Section 44012, subdivision (a). Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (a).

b. **Section 44012, subdivision (f)**: Health and Safety Code section 44012, subdivision (f), requires that all smog inspections include a functional and visual inspection of emission control devices in accordance with procedures established by the Department. Orangevale Smog failed to perform a visual inspection of the Corsica's emission control devices in accordance with procedures prescribed by the Department (Factual Finding 4d), in violation of Section 44012, subdivision (f). Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (a).

c. **Section 44015, subdivision (b)**: Health and Safety Code section 44015, subdivision (b), forbids the issuance of a certificate of compliance to vehicles that do not meet the specifications set forth in Health and Safety Code section 44012. Orangevale Smog issued an electronic certificate of compliance for the Corsica without testing the Corsica to determine if it was in compliance with Health and Safety Code section 44012 (Factual Finding 4), in violation of Section 44015, subdivision (b). Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (a).

D. *Violations of Regulations Pursuant to the Motor Vehicle Inspection Program*

4. A smog check station license may be disciplined if the licensee, or any officer,

partner, or director of the licensee, violates any regulation adopted pursuant to the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (c).) Cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 based on the following violations of regulations adopted pursuant to the Motor Vehicle Inspection Program:

a. **Section 3340.35, subdivision (c)**: California Code of Regulations, title 16, section 3340.35, subdivision (c), precludes the issuance of a certificate of compliance for a vehicle that has not undergone a proper smog inspection. Orangevale Smog issued a certificate for the Corsica without having performed a proper smog inspection (Factual Finding 4f), in violation of Section 3340.35, subdivision (c). Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (c).

b. **Section 3340.42**: California Code of Regulations, title 16, section 3340.42 specifies the testing methods and procedures for smog inspections. Orangevale Smog did not follow those methods and procedures when it inspected the Corsica (Factual Finding 4g), in violation of Section 3340.42. Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (c).

E. *Dishonesty, Fraud, or Deceit*

5. A smog check station license may be disciplined if the licensee, or any officer, partner, or director of the licensee, commits an act involving dishonesty, fraud, or deceit. (Health & Saf. Code, § 44072.2, subd. (d).) Orangevale Smog committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing Certificate of Compliance No. NS377311 without performing a bona fide inspection of the Corsica's emission control devices and system, thereby depriving the public of the protection afforded by California's vehicle emissions laws. (Factual Finding 4h.) Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (d).

II. *Cause for Discipline Based on the August 26, 2010 Undercover Operation*

A. *Misleading Statements*

6. Orangevale Smog made misleading statements which it knew, or through the exercise of reasonable care should have known, were untrue or misleading when it issued Certificate of Compliance NS431311 certifying that the Impala was in compliance with applicable laws and regulations when, in fact, the vehicle was missing its PCV system. (Factual Finding 5a.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253105 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

B. *Failed to Provide a Copy of a Signed Document*

7. An Automotive Repair Dealer registration may be disciplined when the dealer fails to provide a customer with a copy of the repair order as soon as the document is signed. (Bus. & Prof. Code, § 9884.7, subd. (a)(3).) Orangevale Smog failed to provide the undercover operative with a copy of the work order after the operative signed it. (Factual Finding 5b.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253105 pursuant to Business and Professions Code section 9884.7, subdivision (a)(3).

C. *Fraud*

8. Orangevale Smog committed fraud by issuing Certificate of Compliance No. NS431311 for the Impala without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the public of the protection afforded by California's vehicle emissions laws. (Factual Finding 5c.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253105 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

D. *Failure to Provide a Written Estimate*

9. An Automotive Repair Dealer registration may be disciplined when the dealer fails in any material respect to comply with the Automotive Repair Act or any regulations adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (a)(6).) Business and Professions Code section 9884.9, subdivision (a), requires a dealer to provide the customer with a written estimate prior to commencing any work and accruing any charges. Orangevale Smog did not provide the undercover operative with a written estimate prior to performing a smog inspection on the Impala (Factual Finding 5d), in violation of Section 9884.7, subdivision (a)(6). Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 253105 pursuant to Business and Professions Code section 9884.7, subdivision (a)(6).

E. *Violations of the Motor Vehicle Inspection Program*

10. Cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 based on the following violations of the Motor Vehicle Inspection Program:

a. **Section 44012, subdivision (a)**: Orangevale Smog failed to determine that all of the Impala's emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures established by the Department (Factual Finding 5e), in violation of Section 44012, subdivision (a). Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (a).

b. **Section 44012, subdivision (f)**: Orangevale Smog failed to perform a visual inspection of the Impala's emission control devices in accordance with procedures prescribed by the Department (Factual Finding 5f), in violation of Section 44012, subdivision (f). Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (a).

c. **Section 44015, subdivision (b)**: Orangevale Smog issued an electronic certificate of compliance for the Impala without properly testing and inspecting the Impala to determine if it was in compliance with Health and Safety Code section 44012 (Factual Finding 5g), in violation of Section 44015, subdivision (b). Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (a).

F. *Violations of Regulations Pursuant to the Motor Vehicle Inspection Program*

11. Cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 based on the following violations of regulations adopted pursuant to the Motor Vehicle Inspection Program:

a. **Section 3340.35, subdivision (c)**: Orangevale Smog issued a certificate for the Impala without having performed a proper smog inspection (Factual Finding 5h), in violation of Section 3340.35, subdivision (c). Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (c).

b. **Section 3340.42**: Orangevale Smog did not follow the Bureau's methods and procedures for performing smog inspections when it inspected the Impala (Factual Finding 5i), in violation of section 3340.42. Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (c).

G. *Dishonesty, Fraud, or Deceit*

12. Orangevale Smog committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing Certificate of Compliance No. NS431311 without performing a bona fide inspection of the Impala's emission control devices and system, thereby depriving the public of the protection afforded by California's vehicle emissions laws. (Factual Finding 5j.) Therefore, cause exists to discipline Smog Check, Test Only, Station License Number TC 253105 pursuant to Health and Safety Code section 44072.2, subdivision (d).

H. *Violations of the Motor Vehicle Inspection Program*

13. A smog technician's license may be disciplined if the licensee, or any officer, partner, or director of the licensee, violates the Motor Vehicle Inspection Program. (Health

& Saf. Code, § 44072.2, subd. (a).) Cause exists to discipline Advanced Emission Specialist Technician License Number EA 630550 issued to Benjamin Hemmer based on the following violations of the Motor Vehicle Inspection Program:

a. **Section 44012, subdivision (a)**: Benjamin Hemmer failed to determine that all of the Impala's emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures established by the Department (Factual Finding 5k), in violation of Section 44012, subdivision (a). Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 630550 pursuant to Health and Safety Code section 44072.2, subdivision (a).

b. **Section 44012, subdivision (f)**: Benjamin Hemmer failed to perform a visual inspection of the Impala's emission control devices in accordance with procedures prescribed by the Department (Factual Finding 5l), in violation of Section 44012, subdivision (f). Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 630550 pursuant to Health and Safety Code section 44072.2, subdivision (a).

c. **Section 44032**: Health and Safety Code section 44032 requires all smog technicians to perform smog inspections in accordance with Health and Safety Code section 44012. Benjamin Hemmer failed to perform tests of the Impala's emission control devices and systems in accordance with Health and Safety Code section 44012 (Factual Finding 5m), in violation of Section 44032. Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 630550 pursuant to Health and Safety Code section 44072.2, subdivision (a).

I. *Violations of Regulations Pursuant to the Motor Vehicle Inspection Program*

14. A smog technician's license may be disciplined if the licensee, or any officer, partner, or director of the licensee, violates any regulation adopted pursuant to the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (c).) Cause exists to discipline Advanced Emission Specialist Technician License Number EA 630550 issued to Benjamin Hemmer based on the following violations of the Motor Vehicle Inspection Program:

a. **Section 3340.30, subdivision (a)**: California Code of Regulations, title 16, section 3340.30, subdivision (c), requires a smog technician to perform smog inspections in accordance with the law. Benjamin Hemmer failed to perform a smog inspection of the Impala in accordance with Health and Safety Code section 44012 (Factual Finding 5n), in violation of Section 3340.30, subdivision (a). Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 630550 pursuant to Health and Safety Code section 44072.2, subdivision (c).

b. **Section 3340.41, subdivision (c)**: California Code of Regulations, title 16, section 3340.41, subdivision (c), precludes the entry of false information into the EIS. Benjamin Hemmer entered false information into the EIS when he input data indicating that

the Impala had passed the visual portion of the inspection (Factual Findings 5o), in violation of Section 3340.41, subdivision (c). Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 630550 pursuant to Health and Safety Code section 44072.2, subdivision (c).

c. **Section 3340.42**: California Code of Regulations, title 16, section 3340.42 specifies the testing methods and procedures for smog inspections. Benjamin Hemmer did not follow those methods and procedures when he inspected the Impala (Factual Finding 5p), in violation of Section 34340.42. Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 630550 pursuant to Health and Safety Code section 44072.2, subdivision (c).

15. A smog technician license may be disciplined if the licensee, or any officer, partner, or director of the licensee, commits an act involving dishonesty, fraud, or deceit. (Health & Saf. Code, § 44072.2, subd. (d).) Benjamin Hemmer committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing Certificate of Compliance No. NS431311 without performing a bona fide inspection of the Impala's emission control devices and system, thereby depriving the public of the protection afforded by California's vehicle emissions laws. (Factual Finding 5q.) Therefore, cause exists to discipline Advanced Emission Specialist Technician License Number EA 630550 pursuant to Health and Safety Code section 44072.2, subdivision (c).

III. *Cost Recovery*

16. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) whether the licensee has been successful at hearing in getting charges dismissed or reduced; 2) the licensee's subjective good faith belief in the merits of his or her position; 3) whether the licensee has raised a colorable challenge to the proposed discipline; 4) the financial ability of the licensee to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct.

As set forth in Factual Finding 6, the parties stipulated to investigation and prosecution costs in the amount of $8,383.83. Therefore, investigation and prosecution costs in the amount of $8,383.83 are reasonable and awarded against respondents Benjamin Judah Hemmer and Joseph Lacy Hemmer, individually and dba Orangevale Smog, jointly and severally, as set forth in the Order below.

ORDER

1. Automotive Repair Dealer Registration No. ARD 253105 issued to Benjamin Judah Hemmer and Joseph Lacy Hemmer, partners, dba Orangevale Smog is REVOKED.

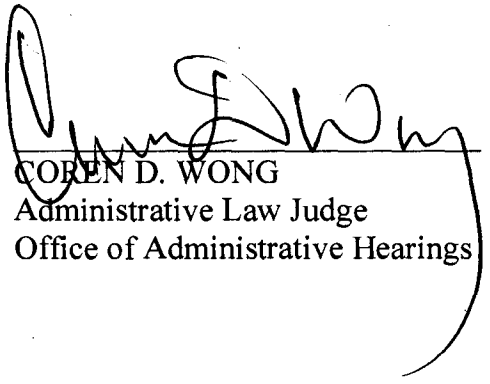
2. Smog Check, Test Only, Station License No. TC 253105 issued to Benjamin Judah Hemmer and Joseph Lacy Hemmer, partners, dba Orangevale Smog is REVOKED.

3. Advanced Emission Specialist Technician License No. EA 630550 issued to Benjamin Judah Hemmer is REVOKED.

4. The Bureau is awarded the sum of $8,383.83 as its costs for investigating and prosecuting this matter. Respondents Benjamin Judah Hemmer and Joseph Lacy Hemmer, individually and dba Orangevale Smog, jointly and severally, shall reimburse the Bureau that amount upon either one or both of their application or reapplication for any license issued pursuant to the Automotive Repair Act, the Motor Vehicle Inspection Program, or any regulation adopted pursuant to either statutory provision.

5. The effective date of the Final Order adopting this Proposed Decision will be August 7, 2012.

DATED: May 21, 2012



COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
KENT D. HARRIS
Deputy Attorney General
State Bar No. 144804
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-7859
Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **ORANGEVALE SMOG** **9200 Greenback Lane** **Orangevale, CA 95662** **BENJAMIN JUDAH HEMMER, PARTNER,** **JOSEPH LACY HEMMER, PARTNER** **Automotive Repair Dealer Registration No. ARD 253105** **Smog Check Test Only Station License No. TC 253105** **and** **BENJAMIN JUDAH HEMMER** **5745 Raybel Avenue** **Sacramento, CA 95841** **Advanced Emission Specialist Technician License No. EA 630550** **and** **MATTHEW ALBERT HEISCH** **1007 South Ridge Drive** **Auburn, CA 95603** **Advanced Emission Specialist Technician License No. EA 144523** Respondents.	Case No. 79/12-01 **FIRST AMENDED ACCUSATION** **SMOG CHECK**

Complainant alleges:

PARTIES

1. Sherry Mehl ("Complainant") brings this First Amended Accusation solely in her official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

Automotive Repair Dealer Registration

2. On or about January 11, 2008, the Bureau issued Automotive Repair Dealer Registration Number ARD 253105 ("registration") to Orangevale Smog ("Respondent Orangevale Smog") with Benjamin Judah Hemmer and Joseph Lacy Hemmer as partners. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

Smog Check Test Only Station License

3. On or about January 14, 2008, the Bureau issued Smog Check Test Only Station License Number TC 253105 ("station license") to Respondent Orangevale Smog. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

Advanced Emission Specialist Technician License

4. On or about October 17, 2008, the Bureau issued Advanced Emission Specialist Technician License Number EA 630550 ("technician license") to Benjamin Judah Hemmer ("Respondent Hemmer"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

Advanced Emission Specialist Technician License

5. On a date uncertain in 2001, the Bureau issued Advanced Emission Specialist Technician License Number EA 144523 ("technician license") to Matthew Albert Heisch ("Respondent Heisch"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2013, unless renewed.

STATUTORY PROVISIONS

6. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct that constitutes fraud.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

7. Code section 118, subdivision (b) states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

8. Code section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person

authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

_____

(signature or initials)"

9. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

10. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

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

12. Section 44072.2 of the Health and Safety Code states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

(c) Violates any of the regulations adopted by the director pursuant to this chapter.

(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

///

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

14. Section 44072.8 of the Health and Safety Code states:

> When a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

COST RECOVERY

15. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

UNDERCOVER OPERATION – MARCH 29, 2010

16. On or about March 29, 2010, a Bureau undercover operator drove a Bureau-documented 1990 Chevrolet Corsica to Respondent Orangevale Smog's facility and requested a smog inspection. The vehicle could not pass the visual portion of a smog inspection because the vehicle's positive crankcase ventilation ("PCV") system was missing. The operator signed a work order/estimate and was provided with a copy of that document prior to the smog inspection. Respondent Heisch performed the smog inspection and issued electronic Certificate of Compliance No. NS377311 for that vehicle. The operator paid $68 for the smog inspection and received a copy of an invoice dated March 29, 2010 and the Vehicle Inspection Report ("VIR").

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

17. Respondent Orangevale Smog has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about March 29, 2010, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading when it issued electronic Certificate of Compliance No. NS377311 for the 1990 Chevrolet

///

Corsica, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's PCV system was missing.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

18. Respondent Orangevale Smog has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about March 29, 2010, it committed acts which constitute fraud by issuing electronic Certificate of Compliance No. NS377311 for the 1990 Chevrolet Corsica, without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

19. Respondent Orangevale Smog has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about March 29, 2010, regarding the 1990 Chevrolet Corsica, it violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Orangevale Smog failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Orangevale Smog failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Orangevale Smog issued electronic Certificate of Compliance No. NS377311 without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

20. Respondent Orangevale Smog has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about March 29, 2010,

regarding the 1990 Chevrolet Corsica, it violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c)**: Respondent Orangevale Smog issued electronic Certificate of Compliance No. NS377311 even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

b. **Section 3340.42**: Respondent Orangevale Smog failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

21. Respondent Orangevale Smog has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about March 29, 2010, regarding the 1990 Chevrolet Corsica, it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NS377311 for that vehicle without performing a bona fide inspection of the emission control devices and system on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

22. Respondent Heisch has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about March 29, 2010, regarding the 1990 Chevrolet Corsica, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Heisch failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Heisch failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent Heisch failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code.

SEVENTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

23. Respondent Heisch has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about March 29, 2010, regarding the 1990 Chevrolet Corsica, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a)**: Respondent Heisch failed to inspect and test that vehicle in accordance with Health and Safety Code section 44012.

b. **Section 3340.41, subdivision (c)**: Respondent Heisch entered false information into the Emission Inspection System ("EIS") for electronic Certificate of Compliance No. NS377311 by entering "Pass" for the visual inspection of the PCV system when, in fact, the vehicle could not pass the visual inspection because the vehicle's PCV system was missing.

c. **Section 3340.42**: Respondent Heisch failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

24. Respondent Heisch has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about March 29, 2010, regarding the 1990 Chevrolet Corsica, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NS377311 without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

UNDERCOVER OPERATION – AUGUST 26, 2010

25. On or about August 26, 2010, a Bureau undercover operator drove a Bureau-documented 1995 Chevrolet Impala to Respondent Orangevale Smog's facility and requested a smog inspection. The vehicle could not pass the visual portion of a smog inspection because the vehicle's positive crankcase ventilation ("PCV") system was missing. The operator signed a

work order/estimate but was not provided with a copy of that document prior to the smog inspection. Respondent Hemmer performed the smog inspection and issued electronic Certificate of Compliance No. NW431311 for that vehicle. The operator paid $68 for the smog inspection and received a copy of an invoice dated August 26, 2010 and the Vehicle Inspection Report.

NINTH CAUSE FOR DISCIPLINE

(Misleading Statements)

26. Respondent Orangevale Smog has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about August 26, 2010, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading when it issued electronic Certificate of Compliance No. NW431311 for the 1995 Chevrolet Impala, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's PCV system was missing.

TENTH CAUSE FOR DISCIPLINE

(Failed to Provide a Copy of a Signed Document)

27. Respondent Orangevale Smog has subjected its registration to discipline under Code section 9884,7, subdivision (a)(3), in that on or about August 26, 2010, it failed to provide the operator with a copy of the work order as soon as he signed the document.

ELEVENTH CAUSE FOR DISCIPLINE

(Fraud)

28. Respondent Orangevale Smog has subjected its registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about August 26, 2010, it committed acts which constitute fraud by issuing electronic Certificate of Compliance No. NW431311 for the 1995 Chevrolet Impala, without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

///

///

///

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Provide a Written Estimate)

29. Respondent Orangevale Smog has subjected its registration to discipline under Code section 9884.7, subdivision (a)(6), in that on or about August 26, 2010, it failed to comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for parts and labor for a specific job regarding the smog inspection.

THIRTEENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

30. Respondent Orangevale Smog has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 26, 2010, regarding the 1995 Chevrolet Impala, it violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Orangevale Smog failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Orangevale Smog failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Orangevale Smog issued electronic Certificate of Compliance No. NW431311 without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012 of that Code.

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

31. Respondent Orangevale Smog has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about August 26, 2010, regarding the 1995 Chevrolet Impala, it violated sections of the California Code of Regulations, title 16, as follows:

///

///

a. **Section 3340.35, subdivision (c)**: Respondent Orangevale Smog issued electronic Certificate of Compliance No. NW431311 even though that vehicle had not been inspected in accordance with section 3340.42 of that Code.

b. **Section 3340.42**: Respondent Orangevale Smog failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

FIFTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

32. Respondent Orangevale Smog has subjected its station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 26, 2010, regarding the 1995 Chevrolet Impala, it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NW431311 for that vehicle without performing a bona fide inspection of the emission control devices and system on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

33. Respondent Hemmer has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 26, 2010, regarding the 1995 Chevrolet Impala, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Hemmer failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Hemmer failed to perform emission control tests on that vehicle in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent Hemmer failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code.

///

///

SEVENTEENTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

34. Respondent Hemmer has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about August 26, 2010, regarding the 1995 Chevrolet Impala, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a)**: Respondent Hemmer failed to inspect and test that vehicle in accordance with Health and Safety Code section 44012.

b. **Section 3340.41, subdivision (c)**: Respondent Hemmer entered false information into the Emission Inspection System for electronic Certificate of Compliance No. NW431311 by entering "Pass" for the visual inspection of the PCV system when, in fact, the vehicle could not pass the visual inspection because the vehicle's PCV system was missing.

c. **Section 3340.42**: Respondent Hemmer failed to conduct the required smog tests and inspections on that vehicle in accordance with the Bureau's specifications.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

35. Respondent Hemmer has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about August 26, 2010, regarding the 1995 Chevrolet Impala, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of Compliance No. NW431311 without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

DISCIPLINARY CONSIDERATIONS

Prior Citations

36. To determine the degree of penalty, if any, to be imposed upon Respondents Orangevale Smog and Hemmer, Complainant alleges as follows:

///

a. On June 29, 2009, the Bureau issued Citation No. C09-1432 to Respondent Orangevale Smog against its registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent Orangevale Smog issued a certificate of compliance to a Bureau vehicle with a missing fuel evaporative storage canister. The Bureau assessed a civil penalty of $500. Respondent Orangevale Smog complied with this citation on September 3, 2009.

b. On September 28, 2009, the Bureau issued Citation No. C2010-0256 to Respondent Orangevale Smog against its registration and station licenses for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent Orangevale Smog issued a certificate of compliance to a Bureau vehicle with a missing PCV system. The Bureau assessed a civil penalty of $1,000. Respondent Orangevale Smog complied with this citation on December 17, 2009.

c. On June 29, 2009, the Bureau issued Citation No. M09-1433 to Respondent Hemmer against his technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42). Respondent Hemmer issued a certificate of compliance to a Bureau vehicle with a missing fuel evaporative storage canister. Respondent Hemmer was required to attend an 8-hour training course. Respondent Hemmer complied with this citation on September 17, 2009.

Additional Undercover Operations

37. Between February 23, 2010, and April 30, 2010, in the course of undercover operations conducted by the Bureau, Respondent Heisch identified a 2001 Chrysler, a 1990

///

Plymouth, and a 1986 Oldsmobile as Bureau of Automotive Repair ("BAR") undercover vehicles and refused to perform smog inspections of those vehicles.

38. On or about April 30, 2010, the Bureau conducted an undercover operation at Respondent Orangevale Smog's facility using a 1994 Ford Ranger with a tampered emission control system. The operator spoke with Respondent Heisch and requested a smog inspection. The vehicle was in the service bay for approximately 50 minutes. Respondent Heisch informed the undercover operator that his vehicle failed the smog inspection. During the course of this undercover operation, another Bureau undercover operator brought a 1999 Mazda B3000 to Respondent Orangevale Smog's facility and requested a smog inspection. The undercover operator spoke with Respondent Heisch and inquired about the length of time it took to perform the smog inspection on the 1994 Ford Ranger. Respondent Heisch told the undercover operator that he had identified the Ford Ranger as a BAR car. Respondent Heisch then told the undercover operator that it would not take very long to smog his vehicle because he had passed the BAR test and should be good for a couple of months. The smog inspection of the 1999 Mazda B3000 was then performed by Respondent Hemmer. After Respondent Hemmer started the smog inspection, the undercover operator heard Respondent Heisch tell Respondent Hemmer about catching 1994 Ford Ranger as a BAR car. Respondent Hemmer asked Respondent Heisch if he had checked the current vehicle and Respondent Heisch told Respondent Hemmer that it was not a BAR car. Respondents Heisch and Hemmer subsequently failed the 1999 Mazda B3000.

OTHER MATTERS

39. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by Orangevale Smog, upon a finding that it has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

40. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 253105, issued to Orangevale Smog, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

41. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 630550, issued to Benjamin Judah Hemmer, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 253105, issued to Orangevale Smog;

2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Orangevale Smog;

3. Revoking or suspending Smog Check Test Only Station License Number TC 253105, issued to Orangevale Smog;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Orangevale Smog;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630550, issued to Benjamin Judah Hemmer;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Benjamin Judah Hemmer;

7. Revoking or suspending Advanced Emission Specialist Technician License Number EA 144523, issued to Matthew Albert Heisch;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Matthew Albert Heisch;

///

///

///

///

///

9. Ordering Orangevale Smog, Benjamin Judah Hemmer, and Matthew Albert Heisch to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 2/9/12

Sherry Mehl by Doug Bal
SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

DOUG BALATT
Assist. Chief

SA2010103063
10718200.doc