

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

In the Matter of the First Amended Accusation Against:

**EVAN I. CASTANEDA-OWNER dba ROUTE 66 SMOG**

743 W. Route 66, Unit #4

Glendora, CA 91740

Automotive Repair Dealer Registration No. ARD 272698

Smog Check Station License No. RC 272698

**EVAN IVALDO CASTANEDA aka EVAN CASTANEDA-GONZALEZ**

8730 Buckeye Ct.

Fontana, CA 92335

Smog Check Inspector License No. EO 150285

Smog Check Repair Technician License No. EI 150285 (formerly Advanced

Emission Specialist Technician License No. EA 150285)

and

**JAIME A RUANO**

1252 Belgreen Dr.

Whittier, CA 90601

Smog Check Inspector License No. EO 641820

Respondents.

Case No. 79/21-8246


OAH No. 2021110527

**DECISION**

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

This Decision shall be effective on August 30, 2022.

IT IS SO ORDERED this 25 day of July, 2022.

  
\_\_\_\_\_  
GRACE ARUPO RODRIGUEZ  
Assistant Deputy Director  
Legal Affairs Division  
Department of Consumer Affairs

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

**In the Matter of the First Amended Accusation Against:**

**EVAN I. CASTANEDA doing business as ROUTE 66 SMOG**

**Automotive Repair Dealer Registration No. ARD 272698,**

**Smog Check Station License No. RC 272698**

**and**

**EVAN IVALDO CASTANEDA, also known as EVAN  
CASTANEDA-GONZALEZ**

**Smog Check Inspector License No. EO 150285**

**Smog Check Repair Technician License No. EI 150285  
(formerly Advance Emission Specialist Technician License No.  
EA 150285),**

**Respondents.**

**Agency Case No. 79/21-8246**

**OAH No. 2021110527**

## **PROPOSED DECISION**

Administrative Law Judge Chris Ruiz, Office of Administrative Hearings (OAH), State of California, heard this matter on June 1, 2022, and June 2, 2022, by videoconference.

Deputy Attorney General Michael Brown represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Attorney Michael B. Levin represented respondents Evan I. Castaneda and his business, Route 66 Smog (collectively, respondents).

Testimony and documentary evidence was received. The record closed and the matter was submitted for decision on June 2, 2022.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

#### **The Pleadings**

1. On September 13, 2021, complainant filed an Accusation.
2. On September 30, 2021, respondents filed a Notice of Defense, challenging complainant's allegations and requesting the instant hearing.
3. On October 28, 2021, complainant filed a First Amended Accusation.
4. Complainant filed the First Amended Complainant in his official capacity.

5. Jaime A. Ruano (Ruano) is named as an additional respondent in the First Amended Accusation. However, complainant and Ruano reached a settlement prior to the hearing date.

### **Licenses Issued to Respondents**

6. On April 26, 2013, the Bureau issued Automotive Repair Dealer Registration (ARD) No. ARD 272698 to Evan I. Castaneda (Castaneda or respondent), owner and doing business as Route 66 Smog (Route 66). The ARD was active at all times relevant to the charges brought in the First Amended Accusation, and was set to expire on April 30, 2022, unless renewed.

7. On May 23, 2013, the Bureau issued Smog Check Station License (Station License) No. RC 272698 to Route 66. The Station License was active at all times relevant to the charges brought in the First Amended Accusation and was scheduled to expire on April 30, 2022, unless renewed.

8. On October 16, 2014, the Bureau certified Route 66 as a STAR Station. The certification will remain active unless respondents' ARD or Station License are revoked, canceled, become delinquent, or the STAR certification is invalidated.

9. In 1996, the Bureau issued Advanced Emission Specialist Technician License No. EA 150285 to Castaneda, which was due to expire on March 31, 2014, but was cancelled on March 6, 2014. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Castaneda's election, as Smog Check Inspector License No. EO 150285 and Smog Check Repair Technician License No. EI 150285, effective March 6, 2014. Castaneda's Smog Check Inspector License (Inspector License) and Smog Check Repair Technician License (Technician License) were active at all times relevant to the charges brought in the First

Amended Complaint and were scheduled to expire on March 31, 2022, unless renewed.

10. The First Amended Accusation alleged multiple violations of the laws and regulations under its jurisdiction arising from clean tanking, an illegal technique used to circumvent smog tests.

### **Clean Tanking**

11. The California Legislature enacted clean air legislation designed to reduce air pollution caused by motor vehicles. The legislation requires motor vehicles to pass periodic smog check inspections. A licensed smog check station causes an electronic certificate of compliance to issue when a vehicle passes an inspection. Only a licensed smog check technician working at a licensed smog check station may conduct a smog check inspection.

12. A vehicle which fails the smog test must be repaired and retested, resulting in extra expenses for the owner. To avoid such an outcome, vehicle owners and smog technicians sometimes engage in illegal activity to circumvent the inspection process.

13. The Bureau polices for potential violations of the smog check system, which includes reviewing the results of smog checks. These results are electronically transmitted directly to its Vehicle Information Database (VID) during smog inspections. The Bureau reviews this data for anomalies indicating potential fraudulent inspections.

14. Among the fraudulent inspection methods, is clean tanking. Clean tanking is utilized for qualifying vehicles manufactured between 1976 and 1995. Such vehicles' emission systems are inspected by administering a Low Pressure Fuel Evaporative Test

(LPFET), using an LPFET testing unit. The test's purpose is to detect leaks in the fuel evaporative system. It requires the technician to connect a hose from the LPFET testing machine to the vehicle and pressurize the fuel tank with Nitrogen gas, after pinching off the gas overflow hose. If the system does not hold pressure, it fails. The failure indicates that the vehicle's fuel evaporative controls (EVAP) are not functioning properly, and the vehicle is releasing polluting vapors into the atmosphere.

15. As part of the LPFET, the testing unit measures the "head space" in the fuel tank of the subject vehicle. The head space is the volume of vapor space in the fuel tank above the fuel level. A full tank of gas will have a smaller head space than a tank holding less gas.

16. The clean tanking method involves an unscrupulous smog test technician who inserts the hose into the LPFET testing unit's calibration tank, rather than the vehicle being tested. The calibration tank, which holds two gallons, is used, once every three days, to calibrate the LPFET testing unit and ensure that it is working properly. When the hose emitting the Nitrogen gas is inserted into the calibration tank, the resulting headspace will be in the 1.5 to 2.5 gallon range if the equipment is working properly. Any score outside of this range renders the LPFET equipment inoperable until it is repaired.

17. Vehicles generally have varying expected headspace readings based on their make, model, and model year (MMMY), the amount of gasoline in the tank, and other factors. A small percentage of vehicles with properly working EVAP systems will result in a 1.5-to-2.5-gallon headspace reading after a properly conducted LPFET test. When data received into the VID from a smog test station shows LPFET results with a much higher percentage of vehicles emitting a 1.5-to-2.5-gallon headspace reading, one possible explanation is that the results are based on clean tanking. In other words,

the results have been obtained by plugging the LPFET tester hose into the calibration tank, instead of the subject vehicles, and ascribing the results to those vehicles.

## **The Bureau's Investigation and Analysis**

18. Bureau Program Representative Oran Medina (Medina) reviewed the data collected in the Bureau's Vehicle Information Database (VID) for LPFETs performed at Route 66 between January 1, 2020, and June 29, 2021. Medina noted a statistical anomaly in the number of vehicles tested, as follows. Medina found that 562 vehicles passed the LPFET test. Of those 562 LPFET tests, 79.18% (445 vehicles) had a calculated headspace volume within the 1.5 to 2.5 gallon range, the same range the LPFET calibration tank is required to maintain. Therefore, Medina concluded that Route 66 had potentially issued 445 fraudulent certifications. YID data showed that, of all the certified vehicles that received an LPFET test in California during the same period of time, only 14.08 percent reported a calculated headspace volume within the 1.5 to 2.5 gallon range. Median then deducted 14.08 percent of the 562 LPFET tests, in order to give Route 66 credit for the state average. The resulting data showed that Route 66 issued approximately 366 certifications that may be fraudulent because the clean tanking method was utilized.

19. Castaneda performed 560 of the 562 smog tests at issue. After adjusting for the statewide percentage of expected headspace volume results in this range (14.08%), the data show that Castaneda issued approximately 364 fraudulent certifications utilizing the clean tanking method.

///

///



## **The Bureau Expert**

20. Francis Di Genova (Di Genova) is employed as an Air Quality Engineer II in the Bureau's Program Evaluation and Referee Unit. Mr. Di Genova holds a Bachelor of Science degree in physics and a Master of Science degree in Environmental Science. His studies included classes in statistics and statistical analysis, and he has continued to study statistics and related subjects through continuing education classes.

21. Di Genova has been working in the air quality and automotive emissions field for more than 45 years. Before working for the Bureau, Di Genova spent 24 years as a partner and the laboratory director of Sierra Research, Inc., an air pollution consulting firm. There, Mr. Di Genova designed and conducted emission tests and analyzed their results for clients which included the United States Environmental Protection Agency, the California Air Resource Board, and the Bureau, as well as other states' air quality regulatory agencies. Di Genova's clients also included private sector companies, such as automobile manufacturers.

22. Before working for Sierra Research, Di Genova worked for the California Air Resources Board for 13 years. There, he served as a supervising air pollution specialist in the agency's research division and later, as chief of its research and economic studies branch. Di Genova's work at the Air Resources Board involved studies of emission control and atmospheric studies among other aspects of air pollution regulation and study.

23. In addition to his work, Di Genova is active in professional associations involved with the study and regulation of emission control and air pollution, the Air and Waste Management Association and the Society of Automotive Engineers. Since

1994, Di Genova has been certified as a "qualified environmental professional" by the Institute for Professional Environmental Practice.

24. Di Genova analyzed the data Medina retrieved from the VID from Route 66. During his testimony at the hearing, as supplemented and further explained by his affidavit, Di Genova explained his analytical process and findings.

25. In sum, Di Genova testified that the results obtained from reviewing the LPFET test performed at Route 66 could not have happened unless Castaneda was using the clean tanking method. That is, while it is possible for a vehicle's LPFET test to show a resulting headspace of 1.5 to 2.5, the probability of it happening as many times as it did at Route 66 was far less than one in a million. Additionally, Route 66 tested and issued certificates to 20 consecutive vehicles which had LPFTE test results in the 1.5-2.5 headspace range (Exhibit 11). Di Genova estimated the probability of this happening as being less than 1 in 100 billion.

26. A more detailed discussion of Di Genova's testimony is unnecessary because Castaneda testified and candidly acknowledged that he used the calibration tank, instead of properly testing the vehicles themselves, during the LPFET tests he performed on all the vehicles at issue.

### **Castaneda's Testimony**

27. Castaneda has owned and operated Route 66 for 9 years. He has held a smog check inspector and a repair technician license for approximately 17 years. Castaneda testified that he used the calibration tank, rather than the vehicles, when he performed the LPFET tests at issue in this matter. Respondent testified that he used the clean tanking method to "save time." The Bureau did not contact respondent

before filing an Accusation. Respondent was not issued any citations before an Accusation was filed. Respondent does not have a prior history of discipline.

## **Costs**

28. Complainant requests reimbursement of costs of investigation in the amount of \$838.40 and costs of enforcement in the amount of \$10,600 (Exhibit 7), for a total of \$11,438.40. Given the scope and complexity of this matter, the costs are reasonable. Further, respondent did not acknowledge, or disclose, his clean tanking misconduct, until he testified at hearing. Respondent did not dispute the costs or offer evidence that he, or his business, is unable to pay them. The evidence did not establish why respondent chose to wait until the hearing date to admit that he had been "clean tanking." An earlier admission would almost certainly have reduced the amount of costs.

## **LEGAL CONCLUSIONS**

### **Authority to Bring Disciplinary Actions**

1. Business and Professions Code section 118, subdivision (b), provides that suspension, expiration, surrender, or cancellation of a license shall not deprive the Director of Consumer Affairs (Director) of the ability to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated. "License" includes certificate, registration, or other means to engage in a business or profession regulated by the Business and Professions Code." (Bus. & Prof. Code, § 477.) Registrations under the Automotive Repair Act may be renewed or reinstated within three years of cancellation or revocation. (Bus. & Prof. Code, §9884.5.)

2. Business and Professions Code section 9884.7 provides that the Director may revoke an ARD registration.

3. Business and Professions Code section 9884.13 provides that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer.

4. Health and Safety Code section 44001.5, subdivision (a), provides the duty of enforcing and administering the Motor Inspection Vehicle Program is vested in the Bureau chief, who reports to the Director.

5. Health and Safety Code section 44072.6 provides expiration or voluntary surrender of a license shall not deprive the Director of jurisdiction to bring disciplinary actions under the Motor Vehicle Inspection Program.

## **Disciplinary Statutes and Regulations**

### **AUTOMOTIVE REPAIR ACT / PROVISIONS RELATED TO LICENSEES**

6. Business and Professions Code section 9884.7, subdivision (a), provides that, where the auto repair dealer cannot show there was a bona fide error, the Director may discipline an auto repair dealer for certain acts, which include fraud (subd. (4)) or for "[f]ailure in any material respect to comply with the provisions of [the Automotive Repair Act] or regulations adopted pursuant to it" (subd. (6)).

7. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the Director may discipline the registration of all places of business operated by an auto repair dealer engaged in repeated violations of the Bureau's statutes or regulations.

8. Business and Professions Code section 9889.2 provides that the Director may bring a disciplinary action against a licensee or any licensee's partner, officer or director for "[c]omitt[ing] any act involving dishonesty, fraud, or deceit whereby another is injured."

9. Business and Professions Code section 9882 allows the Director to vest the Bureau chief with the responsibility to enforce and administer the Automotive Repair Act (Bus. & Prof. Code, §§ 9880-9889.68.)

## **Motor Vehicle Inspection Program**

### **STATUTES / PROVISIONS RELATED TO LICENSEES**

10. Health and Safety Code section 44012 provides that smog check station tests shall be performed in accordance with Department procedures. Health and Safety code section 44015, subdivision (b), provides that a certificate of compliance may only issue when the smog check test has been undertaken in accordance with Health and Safety Code section 44012. Health and Safety Code section 44032 provides that qualified technicians shall perform tests of emissions control devices and systems in accordance with Health and Safety Code section 44012.

11. Under Health and Safety Code section 44072.2, the director may discipline a license if the licensee or any partner, officer, or director violates any section of the Motor Vehicle Inspection Program and the regulations adopted pursuant to it (subd. (a)); violates any of the regulations adopted by the director pursuant to the chapter (subd. (c)); or commits any act involving dishonesty, fraud or deceit whereby another is injured (subd. (d)).

///

12. Health and Safety Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, the director may revoke or suspend any additional license issued under this chapter in the name of the licensee.

### **PROVISIONS RELATED TO APPLICANTS**

13. Health and Safety Code section 44072 provides that the director may refuse to issue a license to any applicant for the reasons set out in Health and Safety Codes section 44072.1. Health and Safety Code section 44072.1 provides that an application may be denied if the licensee "[h]as committed any act which, if committed by any licensee, would be grounds for the suspension or revocation of a license issued pursuant to [the Motor Vehicle Inspection Program.]" (Subd. (c).) Under the same section, a license may be denied for committing "any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefitted." (Subd. (d).)

### **REGULATIONS**

14. California Code of Regulations, title 16 (Regulation), section 3340.24, subdivision (c), provides that the Bureau may discipline a licensee if the licensee falsely or fraudulently issues a certificate of compliance.

15. Regulation 3340.30, subdivision (a), states that a licensed smog check technician shall inspect, test and repair vehicles, as applicable, in accordance with Health and Safety Code sections 44012, 44025, and Regulation section 3340.42.

16. Regulation section 3340.35, subdivision (c), states that a licensed smog check station "shall issue a certificate of compliance or noncompliance to the owner or

operator of any vehicle that has been inspected in accordance with the procedures specified in Regulation section 3340.42 and has all the required emission control equipment and devices installed and functioning properly."

17. Regulation section 3340.41, subdivision (c), states that "[n]o person shall enter into the emissions inspection system any vehicle identification information or emission control system identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested."

18. Regulation section 3340.42 sets forth specific emissions test methods and procedures which apply to all vehicles inspected in California.

## **Causes for Discipline**

### **FRAUD AND VIOLATION OF THE AUTOMOTIVE REPAIR ACT**

19. Cause exists to discipline respondent's automotive repair dealer registration, pursuant to Business and Professions Code section 9884.7, subdivisions (a)(4) and (a)(6), because respondent, while doing business as Route 66, committed fraud by engaging in clean tanking, which resulted in the issuance of false electronic certificates of compliance for 364 vehicles. Respondent failed to comply with the Bureau's rules and regulations when he did not perform bona fide inspections of the emission control and devices. (Factual Findings 18-27.)

### **VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM**

21. Cause exists to discipline respondent's Station License, pursuant to Health and Safety Code section 44072.2, subdivision (a), for failing to ensure that the

emission control tests were performed properly pursuant to Health and Safety Code section 44012 and for issuing certificates of compliance without proper tests and inspections for 364 vehicles in violation of Health and Safety Code section 44015, subdivision (b). (Factual Findings 18-27.)

22. Cause exists to discipline respondent's Station License pursuant to Health and Safety Code section 44072.2, subdivision (c), for failing to comply with regulations adopted pursuant to the Motor Vehicle Inspection Program. Respondent, in operating Route 66, falsely or fraudulently issued electronic smog certificates in violation of Regulations 3340.24, subdivision (c), and 3340.35, subdivision (c); failed to inspect and test 364 vehicles in violation of Regulations 3340.24, subdivision (a); knowingly entered false information into the emissions inspection system for 364 vehicles in violation of Regulation section 3340.41, subdivision (c); and generally failed to ensure that the smog inspections conducted on 364 vehicles were done in accordance with Bureau specifications in violation of Regulation section 3340.42. (Factual Findings 18-27.)

23. Cause exists to discipline respondent's Station License, pursuant to Health and Safety Code section 44072.2, subdivision (d), because respondent committed dishonest, fraudulent, or deceitful acts by issuing certificates of compliance for vehicles without performing bona fide inspections.

24. Cause exists to discipline respondent's Smog Inspector and Repair Technician licenses, pursuant to Health and Safety Code section 44072.2, subdivision (a), for violating Regulation sections 44032 and 44015, subdivision (b). Respondent issued certificates of compliance without ensuring the vehicles that were properly tested and inspected, in compliance with Health and Safety Code section 44012. As a result, certificates of compliance were issued for 364 vehicles which respondent had not properly inspected.



25. Cause exists to discipline respondent's Smog Inspector and Repair Technician licenses pursuant to Health and Safety Code section 44072.2, subdivision (c) for violating Regulations 3340.24, subdivision (c), 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42, because respondent failed to inspect and test 364 vehicles, knowingly entered false information into the emissions inspection system and issued fraudulent smog certificates of compliance.

26. Cause exists to discipline respondent's s Smog Inspector license pursuant to Health and Safety Code section 44072.2, subdivision (d), for committing fraudulent acts. (Factual Findings 18-27.)

## **Disposition**

27. The statutes relating to licensing of professions are designed to protect the public from dishonest, untruthful, and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) In issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.*; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) License disciplinary proceedings are not intended to punish an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.)

28. Respondent's clean tanking activities were on-going and large in number. He was trying to reduce the time a smog test took, so that he could perform more smog tests and earn more money. Performing the smog test correctly is an elemental part of a licensee's duties. Respondent's conduct was intentional, not negligent. Such conduct warrants revocation of respondent's ARD and licenses. Clean tanking inherently involves deceptive and dishonest behavior. It cannot be the result

of negligence or happenstance. The activities occurred under the authority and rights of Respondents' registrations and licenses. Nothing in the record presents any basis to find mitigation or rehabilitation.

## **Costs**

29. Business and Professions Code section 125.3 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the applicable licensing laws to pay reasonable investigation and enforcement costs. As set forth in Factual Finding 28, the amount requested is investigation costs of \$838.40 and enforcement costs in the amount of \$10,600, for a total of \$11,438.40.

30. The Bureau must evaluate several factors to ensure that the cost recovery provision does not deter individuals from exercising their right to a hearing.

*(Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32, 45)*

*(Zuckerman)*. The Bureau must not assess full costs where it would unfairly penalize a respondent who has committed some misconduct but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The Bureau must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the Bureau must consider a respondent's ability to pay; and the Bureau may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct.

31. Applying the *Zuckerman* criteria, respondents' use of the hearing process did not reduce the number of charges alleged in the Accusation; nothing in the record

indicated respondents' good faith belief in the merits of their position, respondent did not provide a colorable challenge to the charges against him, and he did not present any evidence about his financial condition. Regarding the scope of the investigation, this administrative law judge found the costs requested to be reasonable for the size and complexity of the case. However, some of the costs were incurred with respect to respondent Ruano. Therefore, it is fair and equitable to reduce the total costs by 25 percent.

32. Respondents are ordered to pay costs but, as a matter of fairness, only as a condition precedent to issuance or reissuance of any Bureau-issued registration or license in the future.

### **ORDER**

1. Automotive Repair Dealer Registration Number ARD 272698 issued to respondent Evan I. Castaneda, owner of Route 66 Smog, and any other automotive repair dealer registration number issued to respondent are revoked.

2. Smog Check Station License Number RC 272698, issued to respondent Evan I. Castaneda, doing business as Route 66 Smog, is revoked.

3. Smog Check Inspector License Number EO 150285, issued to respondent Evan I. Castaneda, is revoked.

4. Smog Check Repair Technician License Number EI 150285, issued to respondent Evan Ivaldo Castaneda, is revoked. Any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in any name used by respondent Castaneda, is revoked.

5. Respondent Evan I. Castaneda, aka Evan Ivaldo Castaneda, is liable for 75 percent of the Bureau's investigation and enforcement costs. Respondent must pay \$8,578.80 in costs as a condition precedent to any issuance or reissuance of a Bureau-issued registration or license.

DATE: 07/05/2022

  
Christopher Ruiz (Jul 5, 2022 09:59 PDT)

CHRIS RUIZ

Administrative Law Judge

Office of Administrative Hearings