

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

In the Matter of the Petition For Interim
Suspension Order Against:

Case No. 79/13-23

SMOG'S TEST ONLY; SUSANA GARCIA,
Owner
8101 S. Main St. #C
Los Angeles, CA 90003

OAH No. 2012101020

Automotive Repair Dealer Registration No.
ARD 268465

Smog Check Station License No.
TC 268465

and

LUIS ENRIQUE MACIAS
1412 W. 96th Street
Los Angeles, CA 90047

Advanced Emission Specialist Technician
License No. EI & EO 632185

and

CARLOS H. HERNANDEZRODRIGUEZ
9702 Halldale Avenue
Los Angeles, CA 90047

Advanced Emission Specialist Technician
License No. EA 632171

Respondents.

INTERIM SUSPENSION ORDER

On October 24, 2012, John Wallauch (Petitioner), Chief of the Bureau of Automotive Repair (Bureau) filed a Petition for Interim Suspension Order (Petition) pursuant to Business and Professions Code section 494, seeking to suspend the certificates issued to Smog's Test Only, (Smog), Susana Garcia (Respondent Garcia), Luis Enrique Macias (Respondent Macias), and Carlos H. Hernandezrodriguez (Respondent Hernandezrodriguez).

Administrative Law Judge Amy C. Yerkey heard this matter on November 9, 2012, in Los Angeles, California. Thomas Rinaldi, Deputy Attorney General, represented Petitioner. Respondent Carlos Hernandezrodriguez represented himself. There was no appearance by Respondents Smog, Garcia or Macias.

The matter was submitted for decision on November 9, 2012.

FACTUAL FINDINGS

1. Petitioner brought the Petition in his official capacity.
2. Respondent Garcia owns and operates Smog's Test Only, in Los Angeles, California. She holds Bureau-issued license number TC 268465, to operate a Smog Check Test Only Station. She also holds an Automotive Repair Dealer Registration (ARD), number ARD 268465. The registration and license will expire on March 31, 2013, unless renewed.
3. Respondent Macias is a licensed Smog Check Technician, Advanced Emission Specialist. The Bureau issued license number EI &EO 632185 to him on June 17, 2010. The license will expire on July 31, 2014, unless renewed.
4. Respondent Hernandezrodriguez is also a licensed Smog Check Technician, Advanced Emission Specialist. The Bureau issued license number EA 632171 to him on June 14, 2010. The license will expire on June 30, 2014, unless renewed.
5. On July 11, 2012, Bureau Representatives Allen Steele (Steele) and Mario Salas (Salas) conducted an investigation into Respondent Smog's operations. Steele and Salas observed Respondents Macias and Respondent Hernandezrodriguez as the technicians who performed smog inspections at Smog.¹ Steele and Salas conducted undercover surveillance which revealed that Respondents performed at least six fraudulent smog inspections, and issued six false electronic compliance certificates. Respondents utilized the

¹ Although Steele and Salas initially referred to Respondent Hernandezrodriguez as "John Doe," they later discovered his identity, through an independent investigation of another smog shop.

illegal technique of "clean piping," by entering information about a car allegedly being tested into the computer-based smog testing system, and then sampling and testing the exhaust emitted from a different vehicle.

6. The false smog certificates and related information were transmitted to a vehicle database. The Department of Motor Vehicles (DMV) accesses that database to establish that a car has passed a smog check before a car's registration is renewed. It is reasonably inferred that the owners of the automobiles for which false certificates issued were able to renew the registration of their vehicles, and that the DMV relied on the false information in the database in renewing the vehicle registrations.

7. During oral argument, Respondent Hernandezrodriguez essentially admitted to the allegations in the Petition. He justified his conduct by stating that his wrongdoing was not as serious as some other companies who contribute more pollution to the environment. He then defended himself by asserting that his license was not valid on the day in question because he let it expire. The record belies this contention; Respondent Hernandezrodriguez's license certificate does not show any period of expiration. Nonetheless, BAR retains jurisdiction over the license even in the event it expired. Respondent Hernandezrodriguez also claimed that he was never employed by the shop in question. He never denied that he committed the conduct in question.

8. The State of California's smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions.

9. Allowing Respondents to continue to engage in their licensed activity would endanger the public health, safety, and welfare.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter exists under Business and Professions Code sections 494 and 9884.7, California Code of Regulations, title 16, section 3340.24, subdivision (c), and Health and Safety Code section 44072.2, based on Factual Findings 1 through 4.

2. Respondents violated Health and Safety Code section 44072.2, subdivisions (a), (c), and (d), Business and Professions Code sections 9884.7, subdivision (a)(1), (4) and (6), and section 9889.22, and California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.35, subdivision (c), and 3340.42, by clean piping and clean plugging vehicles, and by issuing false and fraudulent smog certificates, based on Factual Findings 5 through 7.

3. Permitting Respondents to continue in their licensed activity would endanger the public health, safety, and welfare, based on Factual Finding 5 through 9. As a matter of law, control and elimination of air pollutants is necessary to protect public health and well

being, and to protect property and vegetation. (Health & Saf. Code, § 43000, subd. (b).) Further, the issuance of fraudulent documents by a licensee, which become part of a public record, and are relied upon by public agencies, also harms the public.

4. Based on the foregoing, cause has been established to issue an interim suspension order, suspending Respondents' licenses.

ORDER

1. The ARD issued to Respondent Susana Garcia, doing business as Smog's Test Only, ARD number 268465, is hereby suspended pursuant to Business and Professions Code section 494.

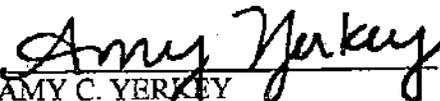
2. The Smog Check Station license issued to Respondent Susana Garcia, doing business as Smog's Test Only, TC 268465, is hereby suspended pursuant to Business and Professions Code section 494.

3. The Smog Check Technician License number EI & EO 632185 issued to Respondent Luis Enrique Macias is hereby suspended pursuant to Business and Professions Code section 494.

4. The Smog Check Technician License number EA 632171 issued to Respondent Carlos H. Hernandezrodriguez is hereby suspended pursuant to Business and Professions Code section 494.

5. Petitioner shall file an accusation and set a hearing thereon in compliance with Business and Professions Code section 494, and other applicable law.

Dated: November 9, 2012


AMY C. YERKEY
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Interim Suspension Order
12 Against:

Case No. 79/13-23

13 **SMOG'S TEST ONLY; SUSANA GARCIA,**
14 **Owner**
15 **8101 S. Main St. #C**
16 **Los Angeles, CA 90003**

**PETITION FOR INTERIM SUSPENSION
ORDER**

[Business and Professions Code section 494]

17 **Automotive Repair Dealer Registration No.**
18 **ARD 268465 and Smog Check Test Only**
19 **Station License No. TC 268465**

**(Filed concurrently with Petition for Interim
Suspension Order)**

20 **LUIS ENRIQUE MACIAS,**
21 **1412 W 96th St.**
22 **Los Angeles, CA 90047**

DATE: November 9, 2012

TIME: 10:00 a.m.

23 **Advanced Emission Specialist Technician**
24 **License No. EI & EO 632185**

PLACE: Office of Administrative Hearings,
25 **320 West Fourth Street, Suite 630**
26 **Los Angeles, CA 90013.**

27 **CARLOS H. HERNANDEZRODRIGUEZ,**
28 **9702 S. Halldale Ave.**
Los Angeles, CA 90047

Advanced Emission Specialist Technician
License No. EA 632171

Respondents.

1 Enrique Macias (Respondent Macias). The Smog Check Inspector and Smog Check Repair
2 Technician License was in full force and effect at all times relevant to the charges brought herein
3 and will expire on July 31, 2014, unless renewed.

4 5. On a date undetermined, the Bureau of Automotive Repair issued Advanced
5 Emission Specialist Technician License Number EA 632171 to Carlos H. Hernandezrodriguez
6 (Respondent Hernandezrodriguez). The Advanced Emission Specialist Technician License was
7 in full force and effect at all times relevant to the charges brought herein and will expire on June
8 30, 2014, unless renewed.

9 JURISDICTION

10 6. Business and Professions Code section 494¹ provides, in pertinent part as
11 follows:

12 (a) A board or administrative law judge sitting alone...may, upon petition, issue an
13 interim order suspending any licentiate....The petition shall include affidavits that
demonstrate, to the satisfaction of the board, both of the following:

14 (1) The licentiate has engaged in acts or omissions constituting a violation of this
15 code or has been convicted of a crime substantially related to the licensed activity.

16 (2) Permitting the licentiate to continue to engage in the licensed activity, or
17 permitting the licentiate to continue in the licensed activity without restrictions,
would endanger the public health, safety, or welfare.

18 7. Health and Safety Code section 44002 provides, in pertinent part, that the
19 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
20 the Motor Vehicle Inspection Program, including the powers and authority granted under
21 Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475) and
22 Chapter 20.3 (commencing with Section 9880) of the Business and Professions Code.

23
24 ¹ Furthermore, the Director of the Department of Consumer Affairs, and by designation, the
25 Bureau Chief, has specific authority to seek the temporary suspension of Respondent Smog's Test
26 Only's smog check test only station license and Respondents Macias' and Hernandezrodriguez's
27 advanced emission specialist technician licenses under Health and Safety Code section 44072.10,
subdivision (a) for certain violations, including fraud, tampering, and/or intentional or willful
28 violation of the Motor Vehicle Inspection Program. This authority is separate and beyond that
enumerated under Business and Professions Code section 494.

1 8. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

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

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

12 **VIOLATIONS OF THE AUTOMOTIVE REPAIR ACT AND MOTOR**

13 **VEHICLE INSPECTION PROGRAM**

14 Respondents have engaged in acts or omissions constituting violations of the
15 Motor Vehicle Inspection Program (Health and Safety Code section 44000 et. seq.) in the
16 following respects:

17 9. On or about July 11, 2012, the BAR performed a video recorded surveillance at
18 Respondent Smog's Test Only's smog check test only facility. The surveillance operation and
19 information obtained from the BAR's Vehicle Information Database ("VID") revealed that
20 Respondent Smog's Test Only, through her technician Respondent Macias as well as Respondent
21 Hernandezrodriguez, performed six (6) smog inspections that resulted in the issuance of
22 electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying that
23 they had tested and inspected those vehicles and that the vehicles were in compliance with
24 applicable laws and regulations:

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Table 1

Test Times	Vehicle in EIS Data (License Plate #)	Vehicle Tested (License Plate #)	Certificate Issued
1108-1118	2002 Toyota Tacoma (6Z49735)	1998 Lincoln Navigator (6GLS432)	XJ289741C
1123-1132	1997 Mitsubishi Eclipse (6DEP482)	1998 Lincoln Navigator (6GLS432)	XJ289742C
1139-1153	1983 Mazda RX7 (4PLC833)	1998 Lincoln Navigator (6GLS432) and 1992 Lexus LS400 (2ZIS787)	XJ289743C
1203-1218	1999 Ford Pickup Truck (6A59437)	1998 Lincoln Navigator (6GLS432) and 1992 Lexus LS400 (2ZIS787)	XJ289744C
1245-1259	1990 Lincoln Continental (2TWD957)	1992 Lexus LS400 2ZIS787	XJ289745C
1306-1317	1998 Chevrolet S-10 Pickup (6P66944)	1992 Lexus LS400 (2ZIS787)	XJ289746C

10. In fact, Respondents performed the smog inspections using the clean piping method by utilizing the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the electronic certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

11. The illegal smog inspections set forth in paragraph Table 1, subject all Respondents to discipline pursuant to Health and Safety Code section 44072.2, subdivisions (a), (c), and (d) and Respondent Smog's Test Only to discipline pursuant to Business and Professions Code section 9889.3, subdivisions (a), (c), and (d).

**CONTINUED PRACTICE BY RESPONDENTS WILL ENDANGER THE PUBLIC
HEALTH, SAFETY AND WELFARE**

12. Respondents are participating in a scheme to fraudulently certify vehicles that have not undergone the necessary testing to ensure that they have met California's strenuous emissions standards.

