

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

In the Matter of the Accusation Against:

CERES SMOG, INC.
DINESHWAR RAM, President
1555 Whitmore Avenue, #A
Ceres, CA 95307

Automotive Repair Dealer Registration
No. ARD 228953
Smog Check Station License No. RC 228953

and

SANJESH PRASAD
3887 Podocarpus Drive
Ceres, CA 95307
Advanced Emission Specialist Technician
License No. EA 150687

Respondents.

Case No. 79/10-80

OAH No. 2010100404

DECISION

The attached Stipulated Settlement and Disciplinary Order [As To Ceres Smog Inc. Dineshwar Ram, President, Only] is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Ceres Smog, Inc., Dineshwar Ram, President, Automotive Repair Dealer Registration No. ARD 228953 and Smog Check Station License No. RC 228953.

This Decision shall become effective 5/10/11.

DATED: April 8, 2011



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
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9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **CERES SMOG, INC.**
14 **DINESHWAR RAM, PRESIDENT**
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16 Ceres, CA 95307
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228953
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17 and

18 **SANJESH PRASAD**
3887 Podocarpus Drive
19 Ceres, CA 95307
Advanced Emission Specialist Technician
20 License No. EA 150687

21 Respondents.

Case No. 79/10-80

OAH No. 2010100404

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

**[AS TO CERES SMOG INC.
DINESHWAR RAM, PRESIDENT
ONLY]**

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23
24 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
entitled proceedings that the following matters are true:

25 PARTIES

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27 1. Sherry Mehl (hereinafter "Complainant") is the Chief of the Bureau of Automotive
28 Repair. She brought this action solely in her official capacity and is represented in this matter by

1 Kamala D. Harris, Attorney General of the State of California, by Geoffrey S. Allen, Deputy
2 Attorney General.

3 2. On or about September 2, 2003, the Director of Consumer Affairs (hereinafter
4 "Director") issued Automotive Repair Dealer Registration Number ARD 228953 (hereinafter
5 "Registration") to Ceres Smog, Inc. with Dineshwar Ram as president (hereinafter
6 "Respondent"). Respondent's Registration was in full force and effect at all times relevant to the
7 charges brought in Accusation No. 79/10-80 and will expire on July 31, 2011, unless renewed.

8 3. On or about September 4, 2003, the Director issued Smog Check Station License
9 Number RC 228953 (hereinafter "Station License") to Respondent. Respondent's Station
10 License was in full force and effect at all times relevant to the charges brought in Accusation No.
11 79/10-80 and will expire on July 31, 2011, unless renewed.

12 4. Respondent is represented in this proceeding by attorney Kirin Virk, whose address
13 is: Damrell, Nelson, Schrimp, Pallios, Pacher and Silva, 1601 I St., 5th Floor, Modesto,
14 California 95354.

15 JURISDICTION

16 5. Accusation No. 79/10-80 (hereinafter "Accusation") was filed before the Director,
17 for the Bureau of Automotive Repair (hereinafter "Bureau"), and is currently pending against
18 Respondent. The Accusation and all other statutorily required documents were properly served
19 on Respondent on June 11, 2010. Respondent timely filed its Notice of Defense contesting the
20 Accusation. A copy of the Accusation is attached as exhibit A and incorporated herein by
21 reference.

22 ADVISEMENT AND WAIVERS

23 6. Respondent has carefully read, fully discussed with counsel, and understand the
24 charges and allegations in the Accusation. Respondent has also carefully read, fully discussed
25 with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order.

26 7. Respondent is fully aware of its legal rights in this matter, including the right to a
27 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
28 its own expense; the right to confront and cross-examine the witnesses against them; the right to

1 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
2 the attendance of witnesses and the production of documents; the right to reconsideration and
3 court review of an adverse decision; and all other rights accorded by the California
4 Administrative Procedure Act and other applicable laws.

5 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
6 every right set forth above.

7 CULPABILITY

8 9. Respondent admits the truth of each and every charge and allegation in the
9 Accusation.

10 10. Respondent agrees that its Registration and Station License are subject to discipline
11 and they agree to be bound by the Director's probationary terms as set forth in the Disciplinary
12 Order below.

13 CONTINGENCY

14 11. This stipulation shall be subject to approval by the Director or his designee.
15 Respondent understands and agrees that counsel for Complainant and the staff of the Bureau may
16 communicate directly with the Director and staff of the Department of Consumer Affairs
17 regarding this stipulation and settlement, without notice to or participation by Respondent or its
18 counsel. By signing the stipulation, Respondent understands and agrees that they may not
19 withdraw its agreement or seek to rescind the stipulation prior to the time the Director considers
20 and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the
21 Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
22 paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall
23 not be disqualified from further action by having considered this matter.

24 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
25 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
26 effect as the originals.

27 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
28 integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
4 writing executed by an authorized representative of each of the parties.

5 14. In consideration of the foregoing admissions and stipulations, the parties agree that
6 the Director may, without further notice or formal proceeding, issue and enter the following
7 Disciplinary Order:

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that the Automotive Repair Dealer Registration Number ARD
10 228953 and Smog Check Station License Number RC 228953 issued to Respondent are revoked.
11 However, the revocation is stayed and Respondent is placed on probation for three (3) years on
12 the following terms and conditions.

13 1. **Actual Suspension.** The Registration and Station License issued to Respondent are
14 suspended for five (5) consecutive business days beginning on the effective date of the Decision
15 and Order.

16 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
17 automotive inspections, estimates and repairs.

18 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
19 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
20 conspicuously displayed in a location open to and frequented by customers and shall remain
21 posted during the entire period of actual suspension.

22 4. **Reporting.** Respondent or Respondent's authorized representative must report in
23 person or in writing as prescribed by the Bureau, on a schedule set by the Bureau, but no more
24 frequently than each quarter, on the methods used and success achieved in maintaining
25 compliance with the terms and conditions of probation.

26 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
27 any financial interest which any partners, officers, or owners of the Respondent facility may have
28 in any other business required to be registered pursuant to Section 9884.6 of the Business and

1 Professions Code.

2 6. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
3 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

4 7. **Jurisdiction.** If an accusation is filed against Respondent during the term of
5 probation, the Director shall have continuing jurisdiction over this matter until the final decision
6 on the accusation, and the period of probation shall be extended until such decision.

7 8. **Violation of Probation.** Should the Director determine that Respondent has failed to
8 comply with the terms and conditions of probation, the Department may, after giving notice and
9 opportunity to be heard suspend or revoke the Registration and/or the Station License.

10 9. **Restrictions.** During the period of probation, Respondent shall not perform any form
11 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,
12 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to
13 properly perform such work, and BAR has been given ten (10) days notice of the availability of
14 the equipment for inspection by a BAR representative.

15 10. **Cost Recovery.** Respondent shall pay to the Bureau costs associated with its
16 investigation and enforcement in the amount of \$2,000.00. Payment to the Bureau of the full
17 amount of cost recovery shall be received no later than 6 months before probation terminates.
18 Failure to complete payment of cost recovery within this time frame shall constitute a violation of
19 probation which may subject Respondent's Registration and Station License to outright
20 revocation; however, the Director or the Director's Bureau designee may elect to continue
21 probation until such time as reimbursement of the entire cost recovery amount has been made to
22 the Bureau.

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Exhibit A

Accusation No. 79/10-80

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN
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Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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17 **Automotive Repair Dealer Reg. No. ARD 228953**
18 **Smog Check Station License No. RC 228953**

A C C U S A T I O N

(Smog Check)

16 and

17 **SANJESH PRASAD**
18 **3887 Podocarpus Drive**
19 **Ceres, CA 95307**
20 **Advanced Emission Specialist Technician**
21 **License No. EA 150687**

Respondents.

22 Complainant alleges:

23 **PARTIES**

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

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

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

5 12. Health & Saf. Code section 44072.10 states, in pertinent part:

6
7 (c) The department shall revoke the license of any smog check
8 technician or station licensee who fraudulently certifies vehicles or participates
9 in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is
not limited to, all of the following:

10
11 (4) Intentional or willful violation of this chapter or any regulation,
standard, or procedure of the department implementing this chapter . . .

12 13. Health & Saf. Code section 44072.8 states that when a license has been revoked
13 or suspended following a hearing under this article, any additional license issued under this
14 chapter in the name of the licensee may be likewise revoked or suspended by the director.

15 **COST RECOVERY**

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

20 **FACTUAL BACKGROUND**

21 15. In or about April 2009, a representative of the Bureau (hereinafter
22 "representative") reviewed information from the Bureau's vehicle information database
23 ("VID") pertaining to Respondent Ceres Smog's smog check activities. The representative
24 found that on April 18, 2009, Respondent Prasad performed a smog inspection on a 1997
25 Dodge Dakota ("Dodge Dakota"), License No. 7T87984, on behalf of Ceres Smog, resulting
26 in the issuance of electronic smog Certificate of Compliance No. N1742542C. The VID data

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1 indicated that the Dodge Dakota had a pending OBD II¹ code of P1384. The representative
2 also found that on April 20, 2009, Prasad performed a smog inspection on a 1997 Dodge
3 Ram ("Dodge Ram"), License No. 5S55670, on behalf of Ceres Smog, resulting in the
4 issuance of electronic smog Certificate of Compliance No. N1742544C. The VID data
5 indicated that the Dodge Ram also had a pending OBDII code of P1384. On April 22, 2009,
6 the Bureau received information indicating that the P1384 fault code was not applicable to
7 either vehicle.

8 16. On April 28, 2009, the representative conducted a scheduled Quality Assurance
9 inspection of Ceres Smog's facility and met with Ram and Prasad. The representative
10 obtained copies of estimates and vehicle inspection reports for the Dodge Dakota and Dodge
11 Ram. Prasad told the representative that the Dodge Ram was owned by an employee of a
12 tire shop that the facility did business with and that the Dodge Dakota was owned by an
13 employee of Ceres Smog. Prasad admitted to the representative that he used another
14 vehicle, a 1999 Jaguar XJ8 ("Jaguar"), during the OBD II portion of the smog inspections
15 on the Dodge Dakota and Dodge Ram. The representative asked Ram and Prasad about the
16 location of the Jaguar and was told that the vehicle belonged to the facility. The
17 representative had Ram connect the Jaguar to the state certified smog machine (Emission
18 Inspection System) and obtain a printout for the OBD II codes. The representative
19 reviewed the printout and found that the Jaguar had a pending OBD II code of P1384.

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24 ¹ The On Board Diagnostics (OBDII) functional test is an automated function of the
25 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect
26 an interface cable from the BAR 97-analyzer to a Diagnostic Link Connector (DLC) which
27 is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically
28 retrieves information from the vehicle's on-board computer about the status of the
readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the
vehicle fails the OBD II functional test, it will fail the overall inspection.

1 FIRST CAUSE FOR DISCIPLINE

2 (Untrue or Misleading Statements)

3 17. Respondent Ceres Smog's registration is subject to disciplinary action pursuant
4 to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or
5 authorized statements which it knew or in the exercise of reasonable care should have
6 known to be untrue or misleading, as follows:

7 a. Respondent Ceres Smog's smog check technician, Respondent Prasad, certified
8 under penalty of perjury on the vehicle inspection report for the Dodge Dakota that he
9 performed the smog inspection on the vehicle in accordance with all Bureau requirements
10 and that the vehicle had passed inspection and was in compliance with applicable laws and
11 regulations. In fact, Respondent Prasad conducted the inspection on the Dodge Dakota
12 using clean-plugging methods² in that he used the Jaguar during the OBD II functional test
13 in order to issue a smog certificate of compliance for the Dodge Dakota, and did not test or
14 inspect the Dodge Dakota as required by Health & Saf. Code section 44012.

15 b. Respondent Ceres Smog's smog check technician, Respondent Prasad, certified
16 under penalty of perjury on the vehicle inspection report for the Dodge Ram that he
17 performed the smog inspection on the vehicle in accordance with all Bureau requirements
18 and that the vehicle had passed inspection and was in compliance with applicable laws and
19 regulations. In fact, Respondent Prasad conducted the inspection on the Dodge Ram using
20 clean-plugging methods in that he used the Jaguar during the OBD II functional test in
21 order to issue a smog certificate of compliance for the Dodge Ram, and did not test or
22 inspect the Dodge Ram as required by Health & Saf. Code section 44012.

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25 _____
26 ² Clean-plugging is the use of the OBD II readiness monitor status and stored fault
27 code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog
28 certificate to another vehicle that is not in compliance due to a failure to complete the
minimum number of self tests, known as monitors, or due to the presence of a stored fault
code that indicates an emission control system or component failure.

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

DATED: _____

5/27/10



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

81 JUN 1 2010

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