

**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. 79/12-67

JP SMOG TEST ONLY; JEAN PIERRE
BENDEZU
1465 East Philadelphia Street
Ontario, CA 91761

OAH No. 2012010522

Automotive Repair Dealer Registration No.
ARD 255003

Smog Check Station License No.
TC 255003

Advanced Emission Specialist Technician
License No. EA 632636,

and

VICTOR ANTONIO RECENDEZ
1052 E. 6th Street, #8
Ontario, CA 91764,

Advanced Emission Specialist Technician
License No. EA 632834

Respondents.

INTERIM SUSPENSION ORDER

On January 19, 2012, Sherry Mehl (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 JP Smog Test Only, (JP Smog), Jean Pierre Bendezu (Respondent Bendezu) and Victor Antonio Recendez (Respondent Recendez).

Administrative Law Judge Amy C. Yerkey heard this matter on February 3, 2012, in Los Angeles, California. William Gardner, Deputy Attorney General, represented Petitioner. Respondent Bendezu and Respondent Recendez represented themselves.

Petitioner and Respondent submitted documents and presented argument, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Petitioner brought the Petition in her official capacity.
2. Respondent Bendezu owns and operates JP Smog Test Only, in Ontario, California. He holds Bureau-issued license number TC 255003, to operate a Smog Check Test Only Station. He also holds an Automotive Repair Dealer Registration (ARD), number ARD 255003. The registration and license will expire on March 13, 2012, unless renewed.
3. Respondent Bendezu is a licensed Smog Check Technician, Advanced Emission Specialist. The Bureau issued license number EA 632636 to him on November 1, 2010. The license will expire on June 30, 2012, unless renewed.
4. Respondent Recendez is also a licensed Smog Check Technician, Advanced Emission Specialist. The Bureau issued license number EA 632834 to him on February 7, 2011. The license will expire on October 31, 2012, unless renewed.
5. In June 2011, Bureau Representatives Andrew Nyborg (Nyborg) and Ronald Norman (Norman) conducted an investigation into Respondent JP Smog's operations. Nyborg and Norman discovered that Respondents Bendezu and Recendez were the only two technicians who performed smog inspections at JP Smog. Nyborg and Norman conducted undercover surveillance which revealed that Respondents performed at least 10 fraudulent smog inspections, and issued 10 false electronic compliance certificates. Respondents utilized the 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. They also used the illegal method of "clean-plugging," which consists of using another vehicle's properly functioning "on board diagnostic generation II" system to generate passing diagnostic readings for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance.
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 Bendezu admitted to the allegations in the Petition. Respondent Recendez noted that he has not been employed at JP Smog since September. However, the illegal activity occurred during the time period when he was employed by JP Smog. The evidence showed that both Respondents took part in the illegal activities.

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, subdivisions (a)(1), (a)(4) and (a)(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 Jean Pierre Bendezu, doing business as JP Smog Test Only, ARD number 255003, is hereby suspended pursuant to Business and Professions Code section 494.

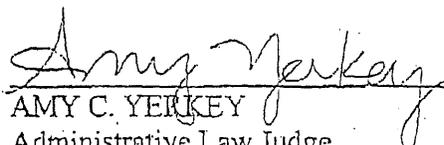
2. The Smog Check Station license issued to Respondent Jean Pierre Bendezu, doing business as JP Smog Test Only, TC 255003, is hereby suspended pursuant to Business and Professions Code section 494.

3. The Smog Check Technician License number EA 632636 issued to Respondent Jean Pierre Bendezu is hereby suspended pursuant to Business and Professions Code section 494.

4. The Smog Check Technician License number EA 632834 issued to Respondent Victor Antonio Recendez 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: February 3, 2012


AMY C. YERKEY
Administrative Law Judge
Office of Administrative Hearings