

**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:

ESTHER PARK - OWNER, DBA  
LOS ANGELES SMOG CENTER  
5552 W. Manchester Ave., Unit B  
Los Angeles, CA 90045

Automobile Repair Dealer Registration  
No. ARD 261816  
Smog Check Test only Station License  
No. TC 261816

And

Case No. 79/11 - 82  
OAH No. 2011040483

MARTIN CHEN  
5336 Virginia Ave.  
Los Angeles, CA 90029

Advanced Emission Specialist Technician  
License No. EA 631325

Respondents.

### INTERIM SUSPENSION ORDER

The Petition of Sherry Mehl for an Interim Suspension Order against Respondents was heard on May 10, 2011, at Los Angeles, by N. Gregory Taylor, Administrative Law Judge (ALJ), Office of Administrative Hearings. Complainant was represented by Kevin J. Rigley, Deputy Attorney General. Martin Chen appeared and represented himself. There was no appearance by Respondent Esther Park, despite proper notice.

At the beginning of the hearing in this matter, Respondent Martin Chen stated that he had no objection to the issuance of the Interim Suspension Order sought by the Bureau. The consequences of his non-objection were explained to him. He stated that he understood and still had no objection to the order being entered.

The Petition and supporting documents and evidence were received, and considered. The ALJ hereby makes the following factual findings, legal conclusions, and order.

### FACTUAL FINDINGS

1. Petitioner Sherry Mehl brought the Petition for Interim Suspension Order (Petition) in her official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California.
2. Respondent Esther Park does business in Los Angeles, California as owner of Los Angeles Smog Center. She holds licenses issued to her by the Bureau as follows: Automobile Repair Dealer Registration No. ARD 261816 and Smog Check Test Only Station License No. TC261816. Martin Chen does business in Los Angeles, California. He holds a license issued to him by the Bureau as an Advanced Emission Specialist Technician License No. EA 631325.
3. On October 26, 2010 between 0800 and 1725 hours, the Bureau conducted a video surveillance of all smog inspections performed at Respondent Park's Los Angeles Smog Center facility. During the entire surveillance period, the Bureau representatives were able to view the service area as well as the only test bay used to perform smog inspections during the surveillance period. Following the video surveillance, Bureau representatives downloaded test data information from the vehicle information database (VID) for the entire surveillance period. This information provided the Bureau with pertinent information related to each individual smog inspection conducted at Respondent Park's facility including the EIS ID number, Advance Emission Specialist Technician license number of the technician who conducted the test, date of the test, start and end times of the test, vehicle type and vehicles tested identified by vehicle year, vehicle make, test type, license number, vehicle identification number (VIN), test results, and certificate number (if issued). The VID data was then compared to the video tapes as well as the personal observations of the Bureau representatives conducting the surveillance. The test data revealed that during the period of

surveillance, eleven smog inspections were conducted and eleven different vehicles were issued electronic certificates of compliance. The test data further revealed that Respondent Chen's Advanced Emission Specialist Technician License was used to perform all of the inspections conducted during the surveillance period. Based on the observations of Bureau personnel, VID data, and review of the video tape surveillance, it was determined that eleven illegal smog inspections were performed during the surveillance period which resulted in the issuance of eleven illegal smog check certificates, as follows:

(See page 4 below).

Time of Smog Inspection	Vehicle Certified and License Number	Vehicle Actually Tested	Certificate No.
1. 09:49 - 10:10	1985 Chevrolet pick-up C-50 License plate No. 2N43988	1998 Honda License plate No. 4GKR583	WP250431
2. 10:19 - 10:34	2000 Honda Accord License plate No. 5URW785	2003 Pontiac License plate No. 6A1V928	WP250432
3. 10:45 - 11:04	2000 Toyota Avalon License plate No. 4NDK092	2002 Mazda License plate No. 6LWH101	WP250433
4. 11:10 - 11:36	2000 Chevrolet Camaro License plate No. 6BUY868	2002 Pontiac License plate No. 6A1V928	WP250434
5. 11:52 - 12:10	2004 Chevrolet Malibu License plate No. 5RIL275	2002 Pontiac License plate No. 6A1V928	WP250435
6. 13:37 - 14:00	1995 Dodge Ram pick- up 2500 License plate No. 7H15625	2002 Pontiac License plate No. 6A1V928	WP250436
7. 14:17 - 14:48	1992 Honda Accord License plate No. 6BTC624	1989 Nissan License plate No. 4ZWF646	WP250437
8. 14:55 - 15:21	1996 Chevrolet Caprice License plate No. 3TTJ204	2002 Pontiac License plate No. 6A1V928	WP250438
9. 15:36 - 15:55	1997 Infiniti I30 License plate No. 4SIB767	2002 Pontiac License plate No. 6A1V928	WP250439
10. 16:04 - 16:23	1995 Saturn SL License plate No. 3PKP765	2002 Pontiac License plate No. 6A1V928	WP250440
11. 16:40 - 17:06	1985 Chevrolet pick-up truck C-20 License plate No. 6212230	1989 Nissan License plate No. 4ZWF646	WP250441

4. The smog inspections set forth above were not performed in accordance with legal requirements and therefore subject Respondent to discipline pursuant to Business and Professions Code section 9884.7, subdivisions (a) (1) and (a) (4), and Health and safety Code section 44072.2, subdivisions (a), (c), and (d).<sup>1</sup>

5. The false smog certificates and related information were transmitted to a Bureau vehicle data base. The Department of Motor Vehicles (DMV) accesses that data base 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 data base in renewing the vehicle registrations.

6. California's smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions. It is also designed to comply with federal law, the Clean Air Act. (See Health & Safety Code, §§ 44000, 44000.5, & 44001.) Official notice may be taken of the fact that vehicle emissions cause irreparable damage to public health and the environment. (Ev. Code, 452).

7. Allowing Respondents to continue to operate will endanger the public health, safety, and welfare of the citizens of the State of California in that for each fraudulent smog inspection performed by Respondents, another vehicle is placed on the road that disproportionately discharges noxious gasses which pollute the environment and contributes to the destruction of the ozone. Children, the elderly, people with pulmonary and respiratory disorders and the immune suppress are particularly susceptible to the health hazards caused by Respondent' conduct.

8. 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. Allowing Respondents to continue to operate will endanger the public health, safety and welfare of the citizens of the State of California in that for each fraudulent smog certification performed by Respondents, there is another vehicle placed on the road that disproportionately discharges noxious gasses that pollute the environment and contribute to the destruction of the ozone. Children, the elderly, people with pulmonary and respiratory disorders and the immune-suppressed are particularly susceptible to the health hazards caused by Respondents' conduct.

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<sup>1</sup> Pursuant to Health and Safety Code section 44072.10, subdivision (c), the department shall revoke the license of any smog check technician or station licensee who fraudulently certified vehicles or participates in the fraudulent inspection of vehicles.

**LEGAL CONCLUSIONS**

1. Jurisdiction to proceed in this matter exists under Business and Professions Code sections 494 and 9884.7, and Health and Safety Code section 44072.2.

2. Respondents have violated Health and Safety Code section 44072, subdivision (d), and Business and Professions Code section 9884.7, subdivisions (a)(1) and (a)(4), and Health and Safety Code section 44072.2, subdivisions (a), (c), and (d) by issuing false and fraudulent smog certificates; based on Factual Findings 2 and 3.

3. Permitting Respondents to continue in their licensed activities, in light of their dishonest use of their licenses, their fraudulent conduct, and other violations of the laws and regulations governing smog testing and smog test facilities, would endanger the public health, safety, and welfare, based on Factual Findings 2 through 13. As a matter of law, control and elimination of air pollutants is necessary to protect the public health and well being, and to protect property and vegetation. (Health & Safety Code, § 43000, subd. (b).) Even without the declaration of Dr. Weller, filed in support of the Petition, it should be self-evident that reduction of vehicle emissions is important to the public health and welfare. Furthermore, the issuance of fraudulent documents by a licensee, which become part of a public record, and are relied upon by public agencies, is also pernicious to the public welfare.

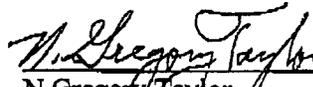
4. Based on all the foregoing, cause has been established to issue an interim suspension order, suspending Respondents' licenses.

**ORDER**

1. The Automotive Repair Dealer Registration No. ARD 261816, and Smog Check Test Only Station License No. TC 261816 issued by the Bureau to Respondent Esther Park is hereby suspended pursuant to Business and Professions Code section 494.

2. The Advanced Emission Specialist Technician License No. EA 631325 issued by the Bureau to Respondent Martin Chen is hereby suspended pursuant to Business and Professions Code section 494.

May 13, 2010

  
\_\_\_\_\_  
N. Gregory Taylor  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 KEVIN J. RIGLEY  
Deputy Attorney General  
4 State Bar No. 131800  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 620-2558  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
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8 **BEFORE THE**  
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10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

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18 and

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20 5336 Virginia Ave.  
21 Los Angeles CA 90029

22 Advanced Emission Specialist Technician  
23 License No. EA 631325

24 Respondents.  
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Case No. 79/11 - 82

OAH No.

**PETITION FOR INTERIM SUSPENSION  
ORDER**

(Filed concurrently with Memorandum of  
Points and Authorities in Support of Interim  
Suspension Order)

Hearing Date: May 10, 2011

Hearing Time: 1:30p.m.

Place: Office of the Administrative Hearings  
320 West Fourth Street, Suite 630  
Los Angeles, CA 90013



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

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

5. Business and Professions Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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.

...

(4) Any other conduct which constitutes fraud.

6. Health and Safety Code section 44072.2 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.

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

**INSPECTION PROGRAM**

7. Respondents have engaged in acts or omissions constituting violations of the Automotive Repair Act (Business and Professions Code section 9880 et. seq.) and Motor Vehicle Inspection Program (Health and Safety Code section 44000 et. seq.) in the following respects:

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<b>Time of Smog Inspection</b>	<b>Vehicle Certified and License Number</b>	<b>Vehicle Actually Tested</b>	<b>Certificate No.</b>
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11. 16:40 - 17:06	1985 Chevrolet pick-up truck C-20 License plate No. 6Z12230	1989 Nissan License plate No. 4ZWF646	WP250441

1 8. The illegal smog inspections set forth above subject Respondents to discipline  
2 pursuant to Business and Professions Code section 9884.7, subdivisions (a)(1) and (a)(4), and  
3 Health and Safety Code section 44072.2, subdivisions (a), (c), and (d).<sup>2</sup>

4 **CONTINUED PRACTICE BY RESPONDENTS WILL ENDANGER THE PUBLIC**

5 **HEALTH, SAFETY AND WELFARE**

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

9 10. Allowing Respondents to continue to operate will endanger the public health, safety  
10 and welfare of the citizens of the State of California in that for each fraudulent smog inspection  
11 performed by Respondents, another vehicle is placed on the road that disproportionately  
12 discharges noxious gasses which pollute the environment and contributes to the destruction of the  
13 ozone. Children, the elderly, people with pulmonary and respiratory disorders and the immune-  
14 suppressed are particularly susceptible to the health hazards caused by Respondents' conduct.<sup>3</sup>

15 11. The concurrently-filed memorandum of points and authorities, declarations, and other  
16 evidence more fully document and establish the foregoing.

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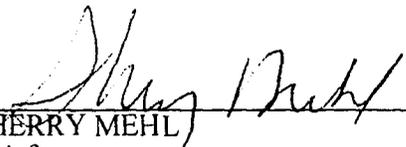
24 \_\_\_\_\_  
25 <sup>2</sup> Pursuant to Health and Safety Code section 44072.10, subdivision (c), the department  
26 shall revoke the license of any smog check technician or station licensee who fraudulently  
27 certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection  
28 includes, but is not limited to, all of the following: (1) Clean piping, as defined by the  
Department.

<sup>3</sup> Official notice may be taken of the fact that vehicle emissions cause irreparable damage  
to public health and the environment. (Evidence Code section 452)

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PRAYER

WHEREFORE, Petitioner prays that an Administrative Law Judge on behalf of the Bureau of Automotive Repair issue an interim order suspending Respondent Park/LASC's ARD Registration and Smog Check Test Only Station License, and Respondent Chen's Advanced Emission Specialist Technician License pursuant to Business and Professions Code section 494, for violations of the Automotive Repair Act and Motor Vehicle Inspection Program and further, order any other and further relief deemed necessary to protect the public health, safety, and welfare.

DATED: 4/8/11   
SHERRY MEHL  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Petitioner*

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