

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS



FILED
OSAH

STATE OF GEORGIA

JUN 15 2015

JAMAR BUTLER

Petitioner,

v.

JUDSON H. TURNER, DIRECTOR
ENVIRONMENTAL PROTECTION
DIVISION, GEORGIA DEPARTMENT OF
NATURAL RESOURCES

Respondent

*
*
*
*
*
*
*
*
*
*
*

Docket No.
OSAH-BNR-AQ-1542992-53-Baxter

K. Westray
Kevin Westray, Legal Assistant

FINAL DECISION

This matter involves an appeal of the Director’s revocation of Petitioner’s Emission Inspector Certificate on August 22, 2014, for violations of the Georgia Motor Vehicle Emission Inspection and Maintenance Act, O.C.G.A. § 12-9-40 through 12-9-70 (“I/M Act”) and the Rules for Enhanced Inspection and Maintenance, GA. COMP. R. & REGS. r. 391-3-20.01 through 391-3-20.21 (“ I/M Rules”).

I. FINDINGS OF FACT

1.

The goal of Georgia’s Enhanced Motor Vehicle Inspection and Maintenance Program (“I/M Program”) is to improve air quality in the thirteen metropolitan Atlanta counties which do not meet federal National Ambient Air Quality Standards. (Transcript (“Tr.”), Tr. at 12.)

2.

The Georgia Clean Air Force (“GCAF”) is a partnership between EPD and its civilian contractor. EPD provides oversight to GCAF in the implementation of Georgia’s I/M Program. GCAF handles covert and overt audits of emission inspectors and stations, inspector training, preparation of reports and audits and maintains the Vehicle Information Database (the VID), that stores all emission records. (Tr. at 13, 57-58.)

3.

To be registered in Georgia all light duty vehicles twenty four model years old and newer must pass an emission inspection. The three most current model year vehicles are exempt. (Tr. at 14.)

4.

There are four parts to an OBD II¹ emission inspection: (1) identify that the malfunction indicator lamp (MIL) is working, (2) check for the presence of the catalytic converter, (3) measure the vehicles on board diagnostics, and (4) test the integrity of the gas cap using an adapter that fits the gas cap. Completion of the OBD II test takes approximately four or five minutes. (Tr. at 13-15.)

5.

To become certified, emission inspectors must complete training including classroom and hands on training. Inspectors must demonstrate knowledge and proficiency in proper inspection procedures. Inspectors must pass (with 80% correct answers) a written test on all aspects of the training. Inspectors must also pass a hands-on test by demonstrating that they can perform all parts of the inspection correctly. Certificates are issued for a two year period. Petitioner completed the required training which included a demonstration using a vehicle and a video presentation on how to conduct an emission inspection. As part of the training, Petitioner viewed a video on how to use a gas cap adaptor to test the integrity of a gas cap. (Tr. at 13, 104-105.)

6.

The Georgia Analyzer System ("GAS") is the computer test system used to perform emission inspections in accordance with the I/M Act and the I/M Rules. In an OBD II inspection, the data stored in the VID is input into the GAS unit by the inspector who types in required information and connects the GAS unit to the vehicle's on board diagnostic computer from which information regarding the vehicle's emission system is retrieved. The VID record is created one key stroke at a time by the inspector who activates the GAS unit at the start of the test by entering his personal access code and the vehicle's identifying information including the year, make, model, and license plate number of the vehicle. The inspector is prompted by the GAS

¹ "On-Board Diagnostic (OBD) System" means a computer system installed on 1996 or later model year vehicles as required by Section 202(m) of the Clean Air Act (42 U.S.C. 7521) which is designed to identify engine or primary emission control component problems which cause excess emissions. The current OBD is second generation referred to as OBD II. (Tr. at 14.)

unit's software as he proceeds with the emission inspection. The software provides the inspector with error warnings and prompts to reduce errors. Specifically, if the inspector types in incorrect information in certain fields, the GAS unit informs him that something is not right and he needs to check it. Once the inspection is completed, the official inspection report is created and the inspection data is transmitted to the VID. (Tr. at 56-63, 101; Respondent's Exhibit 17.)

7.

It is a violation for an emission inspector to provide his personal access code to another person and Petitioner was aware that doing so is a violation.² Nevertheless, Petitioner testified that a few times a week he may have allowed another inspector to complete a test he had begun. (Tr. at 94-95, 100-101.)

8.

Clean scanning is a fraudulent practice whereby a surrogate vehicle is tested but information for another vehicle is entered into the GAS unit. After the surrogate vehicle is tested, an emission certificate is issued for the vehicle that was not tested but whose information was entered into the analyzer. EPD and GCAF identify clean scanning through the vehicle's electronic vehicle identification number or "e-VIN" embedded in the vehicle's OBD computer or through the electronic fingerprint or "e-print" retrieved from the vehicle's OBD computer. An "e-print" is an accumulation of all of the data points on a vehicle. There are generally five to seven monitors on a vehicle monitoring things like the fuel system, temperature sensors, oxygen sensors, and evaporative monitors. EPD detects clean scanning by comparing the supported/not supported monitors retrieved from the vehicles on board diagnostic computer when the vehicle originally failed the inspection to those supported/not supported monitors retrieved from the vehicle's on board diagnostic computer when it passed the inspection. EPD also compares the emission test history (all prior emission tests for the specific vehicle available in the VID) to the clean scanned test. If the monitors reflected on the inspection report change between a failing inspection and a passing inspection, then fraud is indicated. This is often bolstered by the vehicle's emission test history retrieved from the VID. (Tr. at 54-56, 70-77.)

² I/M Rule 391-3-20-.11(9): "No person shall use a certified emission inspector's personal access code to perform any part of an emission inspection. No certified emission inspector shall use the personal access code of another certified emission inspector to perform any part of an emission inspection." I/M Rule 391-3-20-.11(10): "An inspector shall not divulge or authorize the use of his or her personal access code by any other person(s). An inspector shall be held responsible for all inspections performed by any person using his or her personal access code."

9.

Between February 27, 2014 and March 28, 2014, at Fast Tire, LLC in Marietta, Georgia, Petitioner failed to conduct the gas cap portion of the emission inspection on fifty-one (51) vehicles in violation of O.C.G.A. §12-9-55(a) and I/M Rule 391-3-20-.04(2)(a)(3) and (b)(3). Forty-four (44) of the fifty (50) vehicles whose gas caps were not tested were nevertheless issued passing emission certificates. A Notice of Violation (“NOV”) was issued and served on the Petitioner on May 28, 2014, for the gas cap violations. (Tr. at 20, 59-61; Respondent’s Exhibits 2, 3.)

10.

Petitioner’s testimony regarding the gas cap testing violations was contradictory and not credible. He admitted he received training on how to conduct the gas cap portion of the emission inspection but contended he did not fully understand how to test the gas cap. At the same time, Petitioner admitted if the gas cap was locked or if there was any type of discrepancy that would require him to try different adaptors to test the gas cap, he just skipped the gas cap test and entered that it was untestable into the GAS unit.³ Petitioner also admitted he would take any shortcuts necessary to complete the emission tests quickly because he felt pressure from his employer. (Tr. at 77-78, 105.)

11.

The gas cap portion of the emission inspection is important because improperly testing gas caps during an emission inspection can result in fugitive emissions and escape of gasoline into the air which creates smog and pollution. (Tr. at 15.)

12.

On March 25, 2014, Petitioner committed clean scanning at Fast Tire, LLC in Marietta, Georgia and issued a passing emission certificate to the operator of a 2005 Pontiac Grand Prix when he did not test the vehicle in violation of O.C.G.A. § 12-9-55(a)(2) and I/M Rules 391-3-20.05(2) and 391-3-20.13(1). (Tr. at 64-70; Respondent’s Exhibits 4, 8.)

13.

On May 27, 2014, Petitioner committed clean scanning at Fast Tire, LLC in Marietta, Georgia and issued a passing emission certificate to the operator of a 2004 Cadillac CTS when he did not

³ Only a small number of vehicles have a gas cap that is not testable including Jaguars and newer model vehicle. (Tr. at 60.)

test the vehicle in violation of O.C.G.A. § 12-9-55(a)(2) and I/M Rules 391-3-20.05(2) and 391-3-20.13(1). (Tr. at 70-73; Respondent's Exhibits 4, 9.)

14.

On May 30, 2014, Petitioner committed clean scanning at Fast Tire, LLC in Marietta, Georgia and issued a passing emission certificate to the operator of a 2003 Chevrolet G1500 Express when he did not test the vehicle in violation of O.C.G.A. § 12-9-55(a)(2) and I/M Rules 391-3-20.05(2) and 391-3-20.13(1). (Tr. at 73-75, Respondent's Exhibits 4, 10.)

15.

Petitioner was served with an NOV for the three clean scans on June 11, 2014. In his Petition for hearing, Petitioner admits that the three fraudulent tests were done, but asserts "that because of negligence the three tests were done by complete accident and I neglected to match the vehicles vin and other information to whatever documentation I use (car titles, insurance cards, auction stickers, etc) to input information into the GAS unit during an emission test." (Tr. at 21-22; Respondent's Exhibit 5.)

16.

Petitioner admitted during his testimony that he committed the clean scans, again asserting negligence. Petitioner's actions were grossly negligent. When asked if he compared the description of the vehicle he was entering into the GAS unit or the description on the Vehicle Inspection Report he handed to the customer to the actual vehicle, he testified, "Never paid attention. I never even cared to look. I would just pass the paper to the customer and collect the money, or not collect anything if it's a retest and just let him go." (Tr. at 106.)

17.

On February 25, 2015, during a covert audit, Petitioner committed three violations while testing a 4 wheel drive 2002 Jeep Liberty. First, he failed to wear his EPD-issued inspector photo ID in violation of O.C.G.A. §12-9-55(h) and I/M Rule 391-3-20.11(6). Second, he identified the covert vehicle as a two wheel drive rather than a four wheel drive and entered incorrect vehicle identification information into the Vehicle Identification Database in violation of O.C.G.A §12-9-55(a)(2) and I/M Rule 391-3-13(1). Third, he passed the covert vehicle even though it was induced to fail the emission inspection because it has a malfunctioning MIL light that did not illuminate in the key-on/engine-off position in violation of O.C.G.A. §12-9-55(a)(2) and (h) and I/M Rule . 391-3-20.05(d)(2). In his testimony, the covert auditor identified Petitioner as the

person who conducted the covert audit on February 25, 2014, and testified that he was familiar with the Petitioner from earlier covert audits. The Petitioner was served with an NOV for this violation on March 16, 2015, and an Amended NOV for this violation on March 24, 2015. The Amended NOV corrected errors in the original NOV. (Tr. at 42-50, 33-37; Respondent's Exhibits 6, 12-14.)

18.

Petitioner's testimony that he did not sign the Vehicle Inspection Report for the covert audit was not credible or persuasive. When asked if he was saying that the signature was not his, he responded, "I don't think so." (Tr. at 91-93.)

II. CONCLUSIONS OF LAW

1.

The Director's revocation of Petitioner's Emission Inspector Certificate has been reviewed *de novo* and this decision is based on the competent evidence presented at the hearing on May 4, 2015. OSAH Rules 616-1-2-.21(3) and 616-1-2-.21(1).

2.

EPD bears the burdens of going forward and persuasion on all issues. The standard of proof is preponderance of the evidence. OSAH Rules 616-1-2-.07 and 616-1-2-.21(4).

3.

The Director is empowered to amend, modify, revoke, or suspend an Emission Inspection Certificate for violations of the Act and the Rules. O.C.G.A. § 12-9-52.

4.

The Director has shown by a preponderance of the evidence that the Petitioner committed numerous violations of the I/M Act and the I/M Rules. Petitioner violated the I/M Act and the I/M Rules when he failed to perform emission inspections in accordance with prescribed procedures and when he issued a passing emission certificate on vehicles without those vehicles having passed the emission inspection. Specifically, Petitioner committed three fraudulent emission inspections by clean scanning vehicles, by-passed the fuel cap portion of the emission inspection on 51 vehicles in a 30-day period, and committed three violations during a covert audit including passing the covert vehicle that had been rigged to fail the inspection due to a malfunctioning MIL light, failing to wear his identification badge, and entering incorrect vehicle

identification information into the analyzer. O.C.G.A. §12-9-55(a)(2); I/M Rules 391-3-20-.04(2), 391-3-20-.04(4).

5.

Petitioner violated the I/M Act and the I/M Rules when he clean scanned three vehicles and thereby failed to perform emissions inspections in accordance with prescribed procedures and issued passing emissions certificates to operators whose vehicles did not pass the inspection. O.C.G.A. §12-9-55(a)(2); I/M Rules 391-3-20-.04(2), 391-3-20-.04(4).

6.

Petitioner violated the I/M Act and the I/M Rules when he failed to protect his personal access code for the GAS unit. I/M Rule 391-3-20-.11(9), (10).

7.

Petitioner was negligent when he failed to wear his identification badge, failed to enter correct vehicle information into the analyzer, and passed the covert vehicle that was rigged to fail the inspection. Petitioner failed to perform emissions inspections in accordance with prescribed procedures. O.C.G.A. §12-9-55(a)(2); I/M Rules 391-3-20-.04(2), 391-3-20-.04(4).

Accordingly, the Director's action revoking Petitioner's Emission Inspection Certificate is appropriate, justified, and authorized by the Act and the rules and is hereby **AFFIRMED**. In accordance with I/M Rule 391-3-20-.22, Petitioner may re-apply for an emission inspector certificate two years from the date of this Final Decision.

SO ORDERED, this 15th day of June, 2015.



AMANDA C. BAXTER
Administrative Law Judge