

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violations
of Article 19 of the New York State
Environmental Conservation Law ("ECL")
and Title 6, Part 217, of the Official
Compilation of Codes, Rules and Regulations
of the State of New York ("6 NYCRR"),

ORDER

-by-

**UNS AUTO REPAIRS INC., MASOOD H. NAJMI,
GEORGE E. AMPRATWUM, FATAI YINUSA,
and GARY V. WONGBONG,**

DEC Case No.
CO2-20100615-19

Respondents.

This administrative enforcement proceeding concerns allegations that respondents UNS Auto Repairs Inc.,¹ Masood H. Najmi, George E. Ampratwum, Fatai Yinusa and Gary V. Wongbong² completed onboard diagnostic ("OBD") II inspections of motor vehicles using noncompliant equipment and procedures in violation of 6 NYCRR 217-4.2. OBD inspections, when properly conducted, are designed to monitor the performance of major

¹ Staff of the New York State Department of Environmental Conservation listed respondent, in its papers, as UNS Auto Repair Inc. However, UNS Auto Repairs Inc. is the name that respondent used on its application for an inspection station license (see Hearing Exhibit 14). I am revising the caption and pleadings in this matter to conform the spelling of respondent's name to its application. As discussed later in this order (see Order, at 3-4), no domestic corporation is listed in the New York State Department of State website database either under the name UNS Auto Repair Inc. or UNS Auto Repairs Inc.

² Department staff listed respondent in its papers as Gary V. Wongbong. However, the application submitted to the New York State Department of Motor Vehicles ("DMV") and which Department staff submitted as an exhibit (see Hearing Exhibit 16) is unclear whether Wongbong is the correct spelling of respondent's last name. The DMV Safety Hearing Bureau's Finding Sheet dated August 26, 2010 that was issued as part of a proceeding that DMV conducted with respect to this facility, and of which I take official notice pursuant to 6 NYCRR 622.11(a)(5), lists, as one of the respondents, Gary W. Wongsang. However, as the attorney for respondents in this proceeding used the name Gary V. Wongbong in the answer that he submitted on behalf of respondents (see Hearing Exhibit 2) and Department staff used the name Gary V. Wongbong in its charging papers, I am using that name for purposes of this order.

engine components, including those responsible for controlling emissions.

Staff of the New York State Department of Environmental Conservation ("DEC" or "Department") alleges that these violations occurred at an official emissions inspection station located at 3210 Webster Avenue, in the Bronx, New York, during the period from February 21, 2009 through November 5, 2009. Department staff alleges that, during this time, UNS Auto Repairs Inc. was a domestic business corporation duly authorized to do business in New York State, respondent Najmi was president of UNS Auto Repairs Inc., and respondents Najmi, Ampratwum, Yinusa and Wongbong performed mandatory annual motor vehicle emission inspections at that facility.

Specifically, Department staff alleges that a device was used to substitute for and simulate the motor vehicle of record on 979 separate inspections. Department staff contends that, of these inspections, respondent Najmi performed 518 inspections, respondent Ampratwum performed 84 inspections, respondent Yinusa performed 297 inspections, and respondent Wongbong performed 80 inspections (see Hearing Report, at 5 [Finding of Fact No. 16]) and that, as a result, 969 certificates of inspection were issued based on these simulated inspections.

In accordance with 6 NYCRR 622.3(a)(3), Department staff commenced this proceeding against respondents by service of a notice of hearing and complaint dated August 18, 2010. In its complaint, Department staff alleged that respondents violated:

- (1) 6 NYCRR 217-4.2, by operating an official emissions inspection station using equipment and procedures that are not in compliance with Department procedures and standards; and
- (2) 6 NYCRR 217-1.4, by issuing emission certificates of inspection to motor vehicles that had not undergone an official emission inspection.

For these violations, Department staff requested a civil penalty of four hundred eighty-nine thousand five hundred dollars (\$489,500).

Respondents submitted an answer dated October 18, 2010, in which they admitted that UNS Auto Repairs Inc. was a domestic corporation and respondent Najmi was its president and that respondents Najmi, Ampratwum, Yinusa and Wongbong worked at UNS

Auto Repairs Inc. as certified motor vehicle emission inspectors; respondents otherwise denied Department staff's charges. Respondents asserted no affirmative defenses in their answer (Hearing Report, at 1-2; Hearing Exhibit 2).

The matter was assigned to Administrative Law Judge ("ALJ") Helene G. Goldberger. A hearing was held on January 24, 2012. Respondents were represented by Vincent P. Nesci, Esq. None of the respondents was present at the hearing and no witnesses were called on behalf of any of the respondents.

Based on the record, I adopt the ALJ's hearing report as my decision in this matter, subject to the following comments.

Liability

A. First Cause of Action

I concur, in part, with the ALJ's determination that Department staff is entitled to a finding of liability with respect to the first charge -- that is, the operation of an official emissions inspection station using equipment or procedures that are not in compliance with Department procedures or standards, in violation of 6 NYCRR 217-4.2.

1. UNS Auto Repairs Inc.

The ALJ found that respondent UNS Auto Repairs Inc. is liable for all 979 violations "because, at the time [the violations] occurred, it held the license to 'operate' the official inspection station" (Hearing Report, at 8). The status of UNS Auto Repairs Inc. is, however, unclear. Department staff, in its complaint, stated that upon information and belief UNS Auto Repairs Inc. was "a domestic business corporation duly authorized to do business in the State of New York" and that it owned and operated an official emission inspection station at 3210 Webster Avenue in the Bronx, New York (see Hearing Exhibit 1, ¶¶2&3). These allegations were admitted in the answer that respondents' attorney filed on behalf of respondents (see Hearing Exhibit 2, ¶¶ 2&3). Respondents' attorney at the hearing made an appearance on behalf of the corporate entity as well as the other respondents (see Hearing Transcript, at 3).

Contrary to the allegations and admissions that UNS Auto Repairs Inc. is a domestic business corporation duly authorized to do business in the State of New York, however, the public records of the New York State Department of State, of which I

take official notice (see 6 NYCRR 622.11[a][5]), do not list any domestic corporation in New York State under the name UNS Auto Repairs Inc. (or UNS Auto Repair Inc.). While the record of the administrative proceeding shows that respondent Najmi is a corporate officer of UNS Auto Repairs Inc. (see Hearing Exhibit 14; see also Hearing Exhibit 2, at ¶4), Department of State records state that Najmi is the chief executive officer of an entity named "UNS Corporation" with an address of 3210 Webster Avenue, Bronx, New York. The address for UNS Corporation is the same address as for UNS Auto Repairs Inc. (see id.). The record before me, however, fails to establish what, if any, connection exists between UNS Corporation and UNS Auto Repairs Inc. As the record is inadequate to hold UNS Auto Repairs Inc. liable, the charges against it are dismissed.

2. Najmi, Yinusa and Wongbong

The ALJ concludes that respondent Najmi should be held liable for all 979 violations as a responsible corporate officer (see Hearing Report, at 8-9). The ALJ sets forth factors that would be considered in establishing liability under this theory (see id., at 8). The record in this proceeding, however, does not reflect that Department staff advanced this theory of liability, or that it made a sufficient showing in that regard. Furthermore, in light of the indeterminate business status of UNS Auto Repairs Inc. (that is, whether or not it actually is a corporation), I do not accept this theory of liability with respect to respondent Najmi. Accordingly, I am not holding Najmi liable as a responsible corporate officer for all the violations conducted at the facility. I do, however, hold him responsible for the 518 noncompliant inspections that he personally conducted.³

The ALJ properly held that respondents Yinusa and Wongbong are each "liable for each of the noncompliant inspections he performed" (Hearing Report, at 8).

³ If in fact UNS Auto Repairs Inc. does not legally exist, it could be concluded that UNS Auto Repairs Inc. is simply an assumed name used by respondent Najmi, who filed the application on behalf of that entity (see Hearing Exhibit 14). As such, respondent Najmi might be held personally liable for the acts of UNS Auto Repairs Inc. (see, e.g., Fuller v Rowe, 57 NY 23, 26 [1874]; Worthington v Griesser, 77 AD 203, 206-208 [1st Dept 1902]). This theory of liability, however, was not raised in this proceeding and I decline to reach whether respondent Najmi, doing business as UNS Auto Repairs Inc., would be liable in that circumstance.

3. Ampratwum

I also agree with the ALJ's recommendation to dismiss the first (and second) cause of action against respondent Ampratwum because he is deceased. I take official notice of the public records of the Bronx County Surrogate's Court and find that George E. Ampratwum (hereinafter "Ampratwum") died on May 1, 2008.⁴ His death preceded both (a) the inspections at issue in this proceeding, and (b) the commencement of this action. Accordingly, respondent Ampratwum could not have been served the notice of hearing and complaint in this matter. Nor does the record indicate that the personal representative of Mr. Ampratwum's estate was served. Therefore the Department has no personal jurisdiction over him or his estate. Significantly, as all the violations occurred after his death, he could not have committed the violations that are the basis of the allegations against him. Accordingly, the matter as to respondent Ampratwum is dismissed.⁵

B. Second Cause of Action

With respect to the second cause of action, I concur with the ALJ's determination that violations of 6 NYCRR 217-1.4 cannot be found (see Hearing Report, at 18-19) for the reasons that have been stated in prior Commissioner decisions (see Matter of Geo Auto Repairs, Inc., Order of the Commissioner, March 14, 2012, at 3-4; Matter of AMI Auto Sales Corp., Decision and Order of the Commissioner, February 16, 2012, at 3; Matter of Gurabo Auto Sales Corp., Decision and Order of the Commissioner, February 16, 2012, at 3). Accordingly, the alleged violations of 6 NYCRR 217-1.4 are hereby dismissed as to respondents UNS Auto Repairs Inc., Masood H. Najmi, Fatai Yinusa, Gary V. Wongbong, and (as previously discussed) George E. Ampratwum.

⁴ Comparing the personal information contained in Hearing Exhibit 17 with the Petition for Letters of Administration, Birth Certificate and Report of Death of an American Citizen Abroad, filed in the Bronx County Surrogate's Court, verifies that the named respondent, George E. Ampratwum, died on May 1, 2008.

⁵ Although Attorney Vincent P. Nesci filed an answer dated October 18, 2010 on behalf of George E. Ampratwum, as well as the other respondents (see Hearing Exhibit 2), by letter dated February 18, 2011 Attorney Nesci advised ALJ Edward Buhrmaster that he was only representing UNS Auto, Masood H. Najami, Fatai Yinusa and Gary V. Wongbong in this proceeding.

Civil Penalty

Staff requested a penalty of four hundred eighty-nine thousand five hundred dollars (\$489,500), based on five hundred dollars (\$500) per simulated inspection. Staff presented its approach to calculating civil penalties in this and similar enforcement cases. The ALJ noted that, consistent with the penalty range established by ECL 71-2103(1) for such violations, the maximum penalties would exceed twenty million dollars, significantly more than the amount that Department staff requested (see Hearing Report, at 10).⁶

In her evaluation of the penalty, the ALJ considered the factors set forth in the Department's civil penalty policy, including the economic benefit of noncompliance, the gravity of the violations and respondents' culpability (see Hearing Report, at 10-11).⁷ The ALJ rejected staff's proposed penalties as too high and concluded that lower penalties were appropriate.⁸

The ALJ recommended a total civil penalty of one hundred forty thousand dollars (\$140,000), assessed as follows:

-respondents UNS Auto Repairs Inc. and Najmi to be jointly assessed a civil penalty of one hundred thousand dollars (\$100,000). In this regard, the ALJ concluded that respondent Najmi should be found accountable for all of the illegal inspections based upon his authority and involvement of activities of the facility (see Hearing Report, at 11). However, as noted, I am not finding Najmi liable as a responsible corporate officer;

⁶ Although the civil penalty amounts provided by ECL 71-2103 were increased, effective May 28, 2010, the time period of the violations in this case preceded that date.

⁷ In this proceeding, none of the inspectors presented testimony (see generally Hearing Transcript; see also Hearing Report, at 11) and, thus, did not avail themselves of the opportunity to present any mitigating or other relevant factors, either as to liability or penalty, including, for example, any argument relating to ability to pay.

⁸ In considering the appropriate penalty, I do not consider UNS Auto Repairs Inc.'s status as a "small business" to be a mitigating factor as to the penalty for the 979 violations committed at the facility, and therefore decline to adopt that portion of the ALJ's analysis (see Hearing Report, at 10-11). I have rejected considering any "small business" status as a mitigation factor in other similar proceedings (see, e.g., Matter of Sheridan Garage Corp., Order of the Commissioner, October 3, 2013, at 4 n2). The use of simulators is clearly illegal, and results in adverse environmental impacts. Accordingly, I see no basis or justification to consider reducing a civil penalty based on the size of this facility.

-respondent Yinusa to be assessed a civil penalty of thirty thousand dollars (\$30,000); and

-respondent Wongbong to be assessed a civil penalty of ten thousand dollars (\$10,000) (see Hearing Report, at 11-12).

Prior decisions have noted the adverse impact of automotive emissions on air quality and how the use of simulators subverts the regulatory regime designed to address and control these emissions (see, e.g., Matter of Gurabo, Decision and Order of the Commissioner, February 16, 2012, at 6-7). Accordingly, substantial penalties are warranted where violations are found.

I have previously discussed the structure of penalties in administrative enforcement proceedings involving OBD II inspections of motor vehicles using noncompliant equipment and procedures (see, e.g., Jerome Muffler, Order of the Commissioner, May 24, 2013 [Jerome Muffler]; Matter of Autoramo, Inc., Order of the Commissioner, August 13, 2013 [Autoramo]; Matter of New Power Muffler Inc., Order of the Commissioner, July 15, 2013 [New Power]). In similar proceedings the aggregate penalty, depending upon the specific circumstances, has generally ranged from in the neighborhood of one hundred sixty dollars to one hundred eighty dollars per noncompliant inspection. I have considered this range for purposes of my overall penalty calculation.

I have determined that the facility where the noncompliant inspections occurred should be subject to a substantially higher percentage allocation of the aggregate penalty than the penalties assessed against the individual inspector respondents (see Jerome Muffler, at 4-5; Autoramo, at 4-5; New Power, at 5). With respect to individual inspectors, I have allocated the remaining penalty amount in proportion to the number of noncompliant inspections that each inspector conducted. The aggregate penalty amount and the allocation of that amount (a) between the facility and the individual inspectors, and (b) among the inspectors themselves, may be modified based on aggravating or mitigating circumstances as appropriate in each case (see, e.g., Jerome Muffler, at 4-5 [noting examples of mitigating or aggravating factors]).

In consideration of the penalty range established by ECL 71-2103(1), the impacts of this illegal activity (see Hearing Report at 11-13), and penalties assessed in my decisions in Jerome Muffler, Autoramo, and New Power, I have determined that

an aggregate civil penalty of one hundred seventy-one thousand dollars (\$171,000) would be authorized and appropriate. Based upon penalty assessments in prior orders, I would assess a penalty in the amount of one hundred thirty-five thousand dollars (\$135,000) against the facility. However, as discussed previously, this record is unclear as to the status of UNS Auto Repairs Inc. or whether it even legally exists. Accordingly, no penalty is being assessed against UNS Auto Repairs Inc.

The remaining thirty-six thousand dollars (\$36,000) would be allocated among the individual inspectors. As the number of inspections that an inspector performs with noncompliant equipment increases, a higher penalty shall be assessed, subject to any aggravating or mitigating circumstances. Evidenced by the appearance of each inspector respondent's unique certificate number on inspection records of the DMV, the inspector respondents in this case performed the following number of noncompliant inspections: Najmi (518), Yinusa (297), and Wongbong (80) (see Hearing Report, at 5 [Finding of Fact No. 16]).

Of the noncompliant inspections performed at this facility, Masood H. Najmi individually performed more than half (518 of 979 noncompliant inspections, or approximately 52 percent). Accordingly, I am assessing a civil penalty against him in the amount of nineteen thousand one hundred dollars (\$19,100) (approximately 52% of \$36,000). With respect to the remaining inspector respondents, I hereby assess civil penalties as follows: Fatai Yinusa, who performed 297 (approximately 30 percent) of the noncompliant inspections, a civil penalty of ten thousand eight hundred dollars (\$10,800); and Gary V. Wongbong, who performed 80 (approximately 8 percent) of the noncompliant inspections, a civil penalty of two thousand nine hundred dollars (\$2,900).

The 84 noncompliant inspections (approximately 9 percent) using decedent Ampratwum's certification number would have resulted in a civil penalty of three thousand two hundred dollars (\$3,200). However, those 84 noncompliant inspections cannot be attributed to any one or more inspector respondent on this record and, as a result, cannot be allocated individually among the other inspectors.

In sum, the overall amount of the civil penalty assessed by this order is thirty-two thousand eight hundred dollars (\$32,800), after subtracting the amount of three thousand two hundred dollars (\$3,200) that would have been assessed for the

84 noncompliant inspections alleged to have been committed by the deceased inspector respondent and the one hundred thirty-five thousand dollars (\$135,000) that would have been otherwise assessed against the facility. This civil penalty should serve as a deterrent against any future noncompliant activity of this kind.

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

- I. Respondents Masood H. Najmi, Fatai Yinusa, and Gary V. Wongbong are adjudged to have violated 6 NYCRR 217-4.2 by operating an official emissions inspection station using equipment and procedures that are not in compliance with the Department's procedures and standards. Nine hundred seventy-nine (979) inspections using noncompliant equipment and procedures were performed at UNS Auto Repairs Inc., of which Masood H. Najmi performed five hundred eighteen (518), Fatai Yinusa performed two hundred ninety-seven (297), and Gary V. Wongbong performed eighty (80).
- II. Department staff's charges that respondents UNS Auto Repairs Inc. and George E. Ampratwum violated 6 NYCRR 217-4.2 by performing noncompliant inspections are dismissed.
- III. Department staff's allegations that respondents UNS Auto Repairs, Inc., Masood H. Najmi, Fatai Yinusa, George E. Ampratwum, and Gary V. Wongbong violated 6 NYCRR 217-1.4 are dismissed.
- IV. The following penalties are hereby assessed:
 - A. Respondent Masood H. Najmi is hereby assessed a civil penalty in the amount of nineteen thousand one hundred dollars (\$19,100);
 - B. Respondent Fatai Yinusa is hereby assessed a civil penalty in the amount of ten thousand eight hundred dollars (\$10,800); and
 - C. Respondent Gary V. Wongbong is hereby assessed a civil penalty in the amount of two thousand nine hundred dollars (\$2,900).

The penalty for each respondent shall be due and payable within thirty (30) days of the service of this order upon that respondent. Payment shall be made in the form of a cashier's check, certified check or money order payable to the order of the "New York State Department of Environmental Conservation" and mailed to the Department at the following address:

Blaise Constantakes, Esq.
Assistant Counsel
Office of General Counsel
NYS Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1500.

- V. All communications from any respondent to the Department concerning this order shall be directed to Assistant Counsel Blaise Constantakes, at the address set forth in paragraph IV of this order.
- VI. The provisions, terms and conditions of this order shall bind respondents Masood H. Najmi, Fatai Yinusa, and Gary V. Wongbong, and their agents, successors, and assigns in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By: _____
Joseph J. Martens
Commissioner

Dated: February 6, 2014
Albany, New York

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1550**

In the Matter

- of -

Alleged Violations of Article 19 of the New York State Environmental
Conservation Law and Title 6, Part 217, of the Official Compilation of
Codes, Rules and Regulations of the State of New York, by:

**UNS AUTO REPAIR, INC. MASOOD H. NAJMI, GEORGE E. AMPRATWUM,
FATAI YINUSA and GARY V. WONGBONG,**

Respondents.

NYSDEC CASE NO. CO2-20100615-19

HEARING REPORT

- by -

_____/s/_____
Helene G. Goldberger
Administrative Law Judge

March 21, 2012

Proceedings

Pursuant to a notice of hearing and complaint, dated August 18, 2010 (Hearing Exhibit [Ex.] 1), staff of the New York State Department of Environmental Conservation (DEC or Department) charged UNS Auto Repair, Inc., Masood H. Najmi, George E. Ampratwum, Fatai Yinusa and Gary V. Wongbong (the respondents) with violations of Part 217 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), which concerns inspection and maintenance of motor vehicle emission systems.¹

The staff alleged in its first cause of action that the respondents violated 6 NYCRR § 217-4.2 by operating an official emission inspection station using equipment and/or procedures that were not in compliance with Department procedures and/or standards, from February 21, 2009 to November 5, 2009, in 979 mandatory annual motor vehicle emission inspections. The Department staff alleged that the respondents used a device to substitute for and simulate the motor vehicles of record.

In the second cause of action in the complaint, staff charges the respondents with violating 6 NYCRR § 217-1.4 by issuing 969 emission certificates of inspection, as defined by 15 NYCRR 79.1(a), for motor vehicles, from February 21, 2009 to November 5, 2009, based on simulated motor vehicle emission inspections.²

Staff alleged that all of the violations occurred at the official emissions inspection station known as UNS Auto Repair, Inc. (UNS), located at 3210 Webster Avenue, Bronx, New York. Staff alleged that UNS owned and operated an official emission inspection station (#7084491) from February 21, 2009 through November 5, 2009. Staff alleged that respondent Masood H. Najmi was the president of UNS and operated the facility from February 21, 2009 through November 5, 2009.³ In addition, staff alleged that Mr. Najmi was a certified motor vehicle emission inspector (#YR31); Mr. Wongbong was a certified motor vehicle emission inspector (#2HJ5); Mr. Ampratwum was a certified motor vehicle inspector (#5KG7); and Mr. Yinusa was a certified motor vehicle emission inspector (#3QF3).

The respondents UNS, Masood H. Najmi, George E. Ampratwum, Fatai Yinusa and Gary V. Wongbong, submitted an answer (Ex. 2) by their counsel dated October 18, 2010, in which they denied the staff's charges but did admit that respondent UNS Auto Repair Inc. was a domestic business corporation authorized to do business in New York and that respondent Najmi was the president of UNS. In addition, the respondents admitted that UNS employed certified emission inspectors and that respondents Najmi, Ampratwum, Yinusa, and Wongbong were

¹ In the complaint, and answer, Mr. Najmi's name is spelled "Najmi". Exs. 1 and 2. But he spelled it as "Najmi" in the original facility application (Ex. 14) and in his application for certification as a motor vehicle inspector (Ex. 15). Therefore, I have adopted that spelling in this report.

² The complaint originally provided that there were 2,521 emission certificates issued based on the alleged simulated inspections. At the hearing, the Department's counsel corrected this number. Hearing Transcript, p. 12.

³ In his answer dated October 18, 2010, the respondent admitted to being the president of UNS between February 21, 2009 and November 5, 2009. Answer, ¶ 4, Ex. 2. The original facility application dated June 2, 1999 and submitted by Mr. Najmi, provides that Rukhsana Farhat was the president and secretary of UNS and Mr. Najmi was the vice president and treasurer. Ex. 14

certified motor vehicle emission inspectors who worked at UNS during the period from February 21, 2009 to November 5, 2009.⁴ The answer did not set forth any affirmative defenses.

By a statement of readiness dated December 30, 2010 (Ex. 3), DEC staff requested that the Department's Office of Hearings and Mediation Services (OHMS) schedule this matter for hearing. Chief Administrative Law Judge James T. McClymonds informed the parties via a letter dated February 4, 2011 (Ex. 4) that the matter was assigned to ALJ Edward Buhrmaster. Due to several adjournments requested by the attorney for the respondents and scheduling issues, the matter was reassigned to me. Exs. 6-9. I issued a hearing notice dated January 18, 2012 confirming that the hearing was scheduled for January 24, 2012 at 2:00 p.m. in the DEC's Region 2 offices in Long Island City, New York. Ex. 9.

The adjudicatory hearing was held on January 24, 2012 at 2:00 p.m., in the DEC's Region 2 offices. The respondents did not attend or present any witnesses or evidence.

On February 17, 2012, I sent the parties my corrections to the hearing transcript that included the staff's corrections which I received on February 16, 2012. I requested that the respondents send their corrections by no later than March 9, 2012. The respondents did not send any corrections and the record closed on March 9, 2012.

Staff's Charges

As noted above, the staff has alleged that the respondents, as the owner/operator of the facility and emission inspectors: 1) violated 6 NYCRR § 217-4.2 by conducting 979 mandatory annual motor vehicle emission inspections from February 21, 2009 to November 5, 2009, using a device to substitute for and simulate the motor vehicle of record; and 2) violated 6 NYCRR § 217-1.4 by issuing 969 emission certificates of inspections based on simulated motor vehicle emission inspections from February 21, 2009 to November 5, 2009.⁵

Staff maintained that all of the respondents worked as certified inspectors and were aware of the requirements to secure their cards. Staff stated that there was no doubt that these simulated inspections took place and the responsibility rested on the respondents. Because of the serious nature of the violations in the context of DEC's air program, staff explained that it was seeking a penalty of \$500 per violation.

Respondents' Position

The respondents denied the violations in their answer. In addition, Mr. Nesci, the respondents' counsel, questioned the staff regarding the weight limit requirement associated with

⁴ Attorney Vincent Nesci answered for Mr. Ampratwum but subsequently advised Administrative Law Judge (ALJ) Buhrmaster that he did not represent him. Letters sent to Mr. Ampratwum from the Office of Hearings and Mediation Services have been returned and he did not attend the January 24, 2012 hearing. Exs.10-13. On April 29, 2011, a woman called ALJ Buhrmaster identifying herself as Mr. Ampratwum's mother and advised Judge Buhrmaster that the respondent was deceased. Ex. 8.

⁵ In paragraph 19 of the complaint, there was a typographical error indicating a violation of 6 NYCRR § 217-4.2 instead of § 217-1.4. At the hearing, staff counsel confirmed it was an error and noted it was corrected in the amended complaint, ¶ 22. Hearing Transcript, p.11.

the inspection program. Because vehicles subject to the inspection requirement can weigh up to 8500 pounds, he wanted to ascertain whether the weight is checked on each inspection. Hearing Transcript (TR), pp. 41-48. He claimed that if the weight of each vehicle wasn't definitively identified then the data could not be relied upon to establish the charges. TR 44.

Adjudicatory Hearing

The Department staff was represented by Blaise Constantakes, Assistant Counsel. The staff presented two witnesses, Michael Devaux, a vehicle safety technical analyst employed in the Yonkers office of the DMV and James Clyne, an environmental engineer and section chief within DEC's Division of Air Resources, Bureau of Mobile Sources and Technology Development.

The respondents UNS Auto Repair Inc., Masood H. Najmi, Fatai Yinusa, and Gary V. Wongbong were represented by Vincent P. Nesci, Esq. of Mount Kisco, New York. As noted above, the respondent Ampratwum is reportedly deceased; correspondence sent to the addresses provided by Department staff has been returned to the OHMS. TR 3-4; Exs. 10-14.

In its complaint, the staff requests a penalty of \$489,500 which Mr. Constantakes explained that he seeks from all the respondents. TR 12.

In addition to the exhibits that I marked at the start of the hearing and the parties agreed could be entered into evidence (Exs. 1-13), the staff offered Exs. 14-22. See, exhibit list annexed hereto. Upon staff's offering of Exs. 19-22, Mr. Nesci objected to their admission as to the truth of what these documents contained. TR 10-11. I overruled his objection and took in these documents because they are certified copies of DMV data. TR 11. All evidence that is submitted is subject to examination by opposing counsel and the trier of fact who will weigh it to make a determination on the outcome. However, counsel did not contest that the data originated from DMV records and he failed to produce any evidence to contest the probative value of the records. *See*, 6 NYCRR § 622.11(a)(11).

FINDINGS OF FACT

1. On June 2, 1999, Masood H. Najmi, then vice president of UNS Auto Repair, Inc., submitted an original facility application to DMV to license UNS as a motor vehicle inspection station. Ex. 14. The application was approved by DMV, which assigned UNS a facility number of 7084491. *Id.*

2. On November 1, 1999, Masood H. Najmi applied to DMV for certification as a motor vehicle inspector. Ex.15. DMV approved this application and Mr. Najmi was assigned a certificate number of YR31. *Id.*

3. On April 23, 2009, Gary V. Wongbong applied to DMV for certification as a motor vehicle inspector. Ex. 16. DMV approved this application and Mr. Wongbong was assigned a certificate number of 2HJ5. Ex. 16.

4. On May 23, 2007, George E. Ampratwum applied to DMV for certification as a motor vehicle inspector. Ex. 17. DMV approved Mr. Ampratwum's application and assigned a certificate number of 5KG7. *Id.*

5. On October 31, 2003, Fatai Yinusa applied to DMV for certification as a motor vehicle inspector. Ex. 18. DMV approved the application and assigned Mr. Yinusa a certificate number of 3QF3. *Id.*

6. To become a certified motor vehicle inspector, an individual must take a three-hour course and pass a multiple choice examination with a score of 70% or more. TR 16-17, 21. There is also a second test regarding the OBD II inspection that the applicant must pass on the New York Vehicle Inspection Program (NYVIP) machine itself. TR 22. DMV issues each inspector a card that must be used to access the work station at the inspection facility. TR 21. DMV requires inspectors to safeguard their cards at all times and not allow any other individual to them. 15 NYCRR §§ 79.17(b)(5); 79.17(c)(2).

7. DMV and DEC jointly administer NYVIP, a statewide annual motor vehicle emissions inspection program for gasoline-powered vehicles, which is required by the federal Clean Air Act Amendments of 1990 and U.S. Environmental Protection Agency regulations found at 40 CFR Part 51. TR 25.

8. NYVIP features on-board diagnostic (also known as OBD II) testing for model years 1996 and newer light-duty vehicles. TR 25-29. SGS Testcom is the entity that has the contract with New York State to operate the work station analyzer system. TR 31.

9. To commence the OBD II inspection, a motorist presents his/her vehicle for inspection. TR 28. The car is brought into the shop and the vehicle identification information is entered into the NYVIP unit. TR 28-29. The inspector does the safety check and then examines the low enhanced emission inspection items. TR 29. Then the NYVIP unit guides the inspector through the OBD II inspection. TR 29. The OBD II inspection begins with two visual checks of the malfunction indicator light (MIL), to see if it comes on when it should, and then to see if it goes off when the vehicle is running. TR 29.

10. If the vehicle passes the inspection, the inspector is alerted by the NYVIP unit to scan the inspection sticker serial number bar code and the machine asks if the sticker was affixed to the windshield. TR 31.

11. The information obtained by the system will be stored in the NYVIP work station and also transmitted to DMV via SGS Testcom within 5 to 10 seconds. TR 31-32. Both DMV and SGS Testcom maintain the data that is captured during the inspections. *Id.*

12. In 2008, DMV notified DEC about what it found to be irregularities at various emissions testing stations in the New York metropolitan area. TR 33. Based upon the data it was reviewing, DMV concluded that a simulator was being used in these tests rather than the car that was to be tested. TR 33. A one year investigation by DEC, DMV and the Attorney General

ensued in which extensive data analysis was done. TR 34. Ultimately, they were able to find an electronic signature – 15 data fields that constituted a profile of a simulated inspection. *Id.*

13. The agencies identified 44 inspection stations involved in this fraud out of close to 11,000 inspection facilities statewide. TR 35. The agencies found that between 2004 and 2008, out of 18.5 million inspections that were performed in New York State, none had this signature. *Id.* But between March 2008 and July 2010, in 44 downstate stations, the simulated electronic signature was found. *Id.* After July 2010, the agencies no longer found evidence of this electronic signature. TR 35.

14. In the official DMV records of inspections that took place at UNS, beginning on February 21, 2009 to November 5, 2009, there is evidence of 979 simulated inspections on approximately 235 different dates. Exs. 19a-19b. When the identical pattern is seen in the DMV data, it represents a simulated inspection – rather than an inspection of a real vehicle. TR 39.

15. As an example, on September 22, 2008 at 15:45, UNS inspected a 2003 Chevy Astro two-wheel drive and the 15-field data reflects a 2003 Chevy Astro. TR 40-41. The same vehicle was inspected on September 17, 2009 at 13:23 and this time there is no electronic VIN reported and the profile matches that of the simulator. TR 41; Exs. 21, p. 71 and 22, p. 1.

16. The data provides both the unique facility number of the inspection station and the identifying number of the inspector. Exs. 14-18; 19-22. From this information, it is shown that Najmi performed 518 simulated inspections, Ampratwum performed 84 simulated inspections, Yinusa performed 297 simulated inspections, and Wongbong performed 80 simulated inspections. TR 40; Exs. 21-22.

DISCUSSION

Background – I/M Program

This enforcement proceeding charges that UNS Auto Repair, Inc., its principal Masood H. Najmi, and inspectors Najmi, Gary Wongbong, George Ampratwum, and Fatai Yinusa did not check the OBD II systems as part of their inspections of 979 vehicles from February 21, 2009 to November 5, 2009. Ex.1. Staff claims that instead, the respondents used a simulator to substitute for the vehicles.

As explained above and also in greater detail in the Hearing Report of ALJ Edward Buhrmaster dated September 1, 2011, *In the Matter of Gurabo Auto Sales Corp.* (Commissioner's Order and Decision, February 16, 2010), the OBD II testing is part of NYVIP, the state's vehicle inspection program that is required under the federal Clean Air Act Amendments of 1990 and 40 CFR Part 51. The 1990 Clean Air Act Amendments required an inspection and maintenance (I/M) program in areas of the country, like New York, that have failed to meet the national ambient air quality standards (NAAQS) and are thus identified as non-

attainment areas.⁶ While automobile manufacturers are required to produce cleaner-emitting cars under both federal and California laws (the latter more stringent standards having been adopted by New York State pursuant to Clean Air Act § 177), these cars will not remain clean without an inspection program that ensures that the relevant equipment is maintained and repaired as necessary over the life of the vehicle. Thus, any strategy by inspection stations that results in the issuance of inspection stickers based upon fraudulent inspections will undermine efforts to reduce air pollution in the State.

Liability

Pursuant to 6 NYCRR § 622.11(b), the Department staff bears the burden of proof on the charges it asserts in the complaint. Pursuant to 6 NYCRR § 622.11(c), the staff also has to sustain that burden by a preponderance of the evidence.

In this matter, the Department’s witness, James Clyne, credibly testified as to the investigation that gave rise to establishing an “electronic signature” that demonstrated that simulated inspections were ongoing at certain inspection stations in the State. TR 33-36. He was able to show how the specific 15-field electronic signature appearing on the UNS inspection data (as highlighted by Mr. Clyne in Exs. 21 and 22) represents the data that would be obtained from a simulator rather than a vehicle. TR 36-41.

Specifically, Exs. 21 and 22 have a series of headings across each page that identify the data obtained for each column. The first heading is DMV VIN NUM – the vehicle identification number which is obtained from the DMV registration bar code or by manual entry by the inspector. The next column is INSP DTE which is the date of the inspection. On page 71 of Ex. 21, Mr. Clyne concluded that the inspection of the 2003 Chevy Astro on September 22, 2008 at 15:45 was a valid inspection but the inspection of this vehicle a year later was not. TR 40-41. Rather, the inspection on September 17, 2009 at 13:23 was the product of a simulator because the data for that vehicle entry mimics the results that appear in the 15 data fields identified as that of a simulator. TR 41.

These fields, and the entries that are consistent with the simulator profile (shown here in quotation marks), are as follows:

PCM ID1	“10”
PCM ID2	“0”
PID CNT 1	“11”
PIC CNT 2	“0” (should read as PID CNT 2) TR 38.
RR COMP COMPONENTS	“R”

⁶ NAAQS place a cap on the allowable concentrations of the particular pollutant in question – these are primary and secondary caps – protecting health and the environment/property, respectively. 42 U.S.C. § 7409(a)(2). The six criteria pollutants that are covered by NAAQS are particulates, sulfur dioxide, nitrogen dioxide, carbon monoxide, ozone and lead. In areas that do not meet the NAAQS and are thus in non-attainment, the state submits a state implementation plan (SIP) to EPA that spells out the actions the state will take to achieve attainment. 42 USC §§ 7413, 7604. The I/M program is part of the New York SIP that is directed at ozone non-attainment. 42 USC §§ 7511a, 7512a. For more information about the State’s I/M program, go to: <http://www.dec.ny.gov/chemical/48153.html>.

RR	MISFIRE	“R”
RR	FUEL CONTROL	“R”
RR	CATALYST	“R”
RR	02 SENSOR	“R”
RR	EGR	“R”
RR	EVAP EMISS	“R”
RR	HEATED CATA	“U”
RR	02 SENSOR HEAT	“R”
RR	SEC AIR INJ	“U”
RR	AC	“U”

As can be seen from all the highlighted data that appears on Exs. 21 and 22 (Exs. 21 and 22 are the same data extracts from DMV records as 19 and 20 except that the 15-field simulator profile inspections are highlighted in orange), this data is exactly the same for each of these inspections.⁷

These data sheets identify UNS as the inspection station because they contain the DMV facility number on each inspection – 7084491. This number corresponds to the approved facility application. Ex. 14. Similarly, each inspection on the data sheets provides an inspector number that corresponds with one of the 4 respondent inspectors’ certificate numbers: Masood Najmi (YR31); Gary Wongbong (2HJ5); George Ampratwum (5KG7); and Fatai Yinusa (3QF3). Exs. 15-18.

DEC has charged the respondents with violations of both 6 NYCRR §§ 217-4.2 (first cause of action) and 217-1.4 (second cause of action). I find that the violations of 6 NYCRR § 217-4.2 have been established; but for the reasons set forth in ALJ Buhrmaster’s report in *Gurabo*, I do not find violations of § 217-1.4. I also find that all the violations of § 217-4.2 are attributable to UNS as the licensed inspection station and to respondent Najmi, a certified inspector as well as the corporate officer involved in the illegal inspections. The two other respondent inspectors, as the station’s other certified inspectors, may be held liable for the non-compliant inspections that they each performed.⁸

Violation of 6 NYCRR § 217-4.2

Section 217-4.2 of 6 NYCRR provides, “[n]o person shall operate an official emissions inspection station using equipment and/or procedures that are not in compliance with department [DEC] procedures and/or standards.” “Official emissions inspection station” means “[a] facility that has obtained a license from the Commissioner of Motor Vehicles, under section 303 of the VTL [Vehicle and Traffic Law], to perform motor vehicle emissions inspections in New York

⁷ Not only are these numbers identical for the highlighted inspections in Exs. 12 and 13 at the respondents’ facility, they are also identical to the numbers that were reported in *Matter of Gurabo, et al* (ALJ Hearing Report, 9/1/11) and *Matter of AMI Auto Sales Corp., et al* (ALJ Hearing Report, 9/1/11).

⁸ While Mr. Nesci submitted the respondents’ answer on behalf of all the respondents including Mr. Ampratwum, he subsequently represented to me that he did not represent this respondent and believed him deceased. TR 3-4. These circumstances combined with the conversation Judge Buhrmaster had with Saustina Appiah on April 29, 2011 (Ex. 8) and my office’s inability to deliver any correspondence to this respondent (Exs. 10-13), lead to my conclusion that whether Mr. Ampratwum is deceased or not, he was not served with the complaint and cannot be found liable.

State.” 6 NYCRR § 217-1.1(k). VTL § 303(a)(1) sets forth that a license to operate an official inspection station shall be issued only upon written application to DMV, after DMV determines that the station is properly equipped and has competent personnel to perform inspections, and that such inspections will be properly conducted. Section 217-1.3 of 6 NYCRR along with 15 NYCRR § 79.24(b)(1)(ii), as well as the instructions found in the NYVIP vehicle inspections systems operators manual, establish the appropriate procedures and standards that the respondents were to follow to conduct accurate emissions inspections but failed to.

I find that § 217-4.2 was violated 979 separate occasions by the use of a simulator to perform OBD II emissions inspections. The use of a simulator is not consistent with the emissions inspection procedures set forth at 6 NYCRR § 217-1.3, which requires testing of the vehicle’s OBD system to ensure that it functions as designed and completes the diagnostics for necessary supported emission control systems. As Mr. Clyne explained in his testimony, if the inspector plugs the NYVIP work station into a simulator, rather than the automobile to be inspected, there can be no determination as to whether the vehicle would pass the OBD II inspection. TR 39.

UNS is liable for all 979 violations because, at the time they occurred, it held the license to “operate” the official inspection station. Pursuant to 15 NYCRR § 79.8(b), the official inspection station licensee “is responsible for all inspection activities conducted at the inspection station,” and is not relieved of the responsibility by the inspectors’ own duties, which include performing inspections in a thorough manner. 15 NYCRR §§ 79.17(b)(1) and (c). As a private corporation, UNS falls within the definition of “person” at 6 NYCRR § 200.1(bi).

Mr. Najmi was the principal of UNS during the period in question and also a certified inspector and therefore, he is responsible for the violations – both those he was directly involved in as the inspector and those that other individuals may have performed in his shop under his direction. Section 79.8(b) of 15 NYCRR provides the official inspection station licensee “is responsible for all inspection activities conducted at the inspection station,” and is not relieved of that responsibility by the inspectors’ own duties, which include performing inspections in a thorough manner. 15 NYCRR § 79.17(b)(1).

In contrast to the facts in *Sheridan* (ALJ Hearing Report, February 17, 2012, p. 8) and *Gurabo* (ALJ Hearing Report, September 1, 2011, p. 18), Mr. Najmi performed inspections himself and thus, was involved in the day to day operations of the facility. The responsible corporate officer doctrine imposes liability on parties who have, by reason of their position in a corporation, responsibility and authority to prevent or promptly correct a violation, yet fail to do so. Pursuant to this doctrine, three elements must be established before liability is imposed upon a corporate officer: (1) the individual must be in a position of responsibility which allows the person to influence corporate policies and activities; (2) there must be a nexus between the individual's position and the violation in question such that the person could have influenced the corporate actions which constituted the violations; and (3) the individual's actions or inaction facilitated the violations. See, *United States v. Park*, 421 U.S. 658, 673-74 (1975); *Matter of 125 Broadway, LLC and Michael O'Brien*, Decision and Order of the Commissioner, dated December 15, 2006; *Matter of AMI Auto Sales Corp., et al.*, ALJ Hearing Report, dated September 1, 2011 (Decision and Order of the Commissioner, dated February 26, 2012).

In this case, Mr. Najmi, as UNS president, was responsible for the activities at UNS. He applied for the facility's inspection license, had previously served as the corporation's vice-president, secretary and treasurer, and he also served as an inspector at the facility himself. He was not only in a position of authority at UNS but he engaged in the very illegal activities that are the subject of this proceeding. Thus I conclude he facilitated the simulated inspections and was in a position to stop them.

Each of the respondent-inspectors is liable for each of the non-compliant inspections he performed. This liability is based upon the connection between the respondent-inspectors who are certified under VTL 304-a and the official inspection station which is licensed under VTL 303. Section 79.8(b)(2) of 15 NYCRR requires that the inspection station must employ at least one full-time employee who is a certified motor vehicle inspector to perform the services required under DMV's regulations. The inspection station operates through the services that the inspectors provide.

While the Department staff seeks to penalize the respondent-inspectors for all the illegal inspections performed, I find (as ALJ Buhrmaster did in *Gurabo*) that each inspector should be held liable for the specific illegal inspections he performed with the exception of Mr. Najmi's broader responsibility as discussed above.

During his cross-examination of Mr. Clyne, Mr. Nesci raised for the first time a defense based upon the weight of the vehicles. His theory was that if the inspectors did not check the weight of every individual vehicle that was inspected, it is possible that vehicles that did not come under the OBD II inspection requirements were inspected and thus, all the data presented by DEC is suspect. TR 41-46. I reject this argument as Mr. Clyne explained in his testimony that NYVIP has a data base of the weight of every vehicle and additionally, to the extent that the system does not definitely identify the weight, the inspector can address it. TR 42-43, 45-46. Mr. Nesci failed to present any proof that the NYVIP test is failing to identify vehicles that are over 8500 pounds (and not subject to the OBD II test) and I conclude that there is no basis to find the Department's evidence flawed.

Violation of 6 NYCRR § 217-1.4

In the Department staff's second cause of action, it charged violations of 6 NYCRR § 217-1.4. This regulation provides: "No official inspection station as defined by 15 NYCRR 79.1(g) may issue an emission certificate of inspection, as defined by 15 NYCRR 79.1(a), for a motor vehicle, unless that motor vehicle meets the requirements of section 217-1.3 of this Subpart."

As found by Judge Buhrmaster in the *Gurabo* matter, violations of 6 NYCRR § 217-1.4 cannot be found because there is no evidence that UNS was an official inspection station as defined by 15 NYCRR 79.1(g). Section 79.1(g) defines an "official safety inspection station" as one "which has been issued a license by the Commissioner of Motor Vehicles pursuant to Section 303 of the Vehicle and Traffic Law, to conduct safety inspections of motor vehicles exempt from the emissions inspection requirement" (emphasis added). Since the entire focus of the staff's case was the allegations concerning simulated emissions inspections, the established facts do not support a violation of this regulation.

As also noted by ALJ Buhrmaster in *Gurabo*, there is a newly promulgated Subpart 217-6 governing motor vehicle enhanced inspection and maintenance program requirements for the period beginning January 1, 2011. Section 217-6.4 of 6 NYCRR provides: “No official emissions inspection station or certified inspector may issue an emission certificate of inspection, as defined by 15 NYCRR section 79.1, for a motor vehicle unless the motor vehicle has been inspected pursuant to, and meets the requirements of section 217-6.3 of this Subpart.” Section 217-6.3 provides the inspection procedure that an inspection station must use to determine whether the OBD II system performs or fails consistent with the relevant motor vehicle exhaust and emissions standards. These new regulations contain the provisions relevant to the allegations set forth in the second cause of action. However, these regulations do not apply to violations that occurred prior to their promulgation and effective date. Accordingly, the second cause of action must be dismissed.

Penalties

As noted by staff in its complaint, ECL § 71-2103 provides that any person who violates a provision of Article 19 of the ECL, or any code, rule or regulation which was promulgated pursuant thereto, shall be liable for a penalty, in the case of a first violation, of at least Three Hundred Seventy –Five Dollars (\$375.00), but no more than Fifteen Thousand Dollars (\$15,000), and, in the case of a second and any further violation, a penalty of not more than Twenty-Two Thousand Five-Hundred Dollars (\$22,500.00) per violation. The staff requested a penalty of \$489,500 from the respondents – amounting to \$500 per violation. While this amount is less than the maximum that could be derived based upon the 979 separate violations, I find for the reasons set forth below that penalties of \$100,000 for UNS and Masood H. Najmi; \$10,000 for Gary V. Wongbong; and \$30,000 for Fatai Yinusa are appropriate.

The 1990 Civil Penalty Policy requires that all monetary penalty calculations begin with the statutory maximum. The maximum penalty in this matter would come to over \$20 million, clearly unreasonable given the small business involved. However, the maximum penalty is only the starting point; a number of considerations, including the economic benefit of noncompliance, the gravity of the violations, and the culpability of the respondents’ conduct are to be taken into account in determining the appropriate penalty.

With respect to economic benefit, there was no evidence presented of the financial advantage that the respondents gained by violating the law in this matter. Because there is no evidence of economic benefit, it is not a consideration.

As for gravity, the violations are extremely serious as they undermine the State’s air pollution program by passing vehicles which may have had faulty emissions systems. To the extent these vehicles did not have their emissions systems repaired, as required, they would add pollutants to the air that will increase ozone, a component of smog. Thus, a substantial penalty is warranted given the potential impact on the environment.

The Civil Penalty Policy also provides for factors that could adjust the gravity component: (a) culpability; (b) violator cooperation; (c) history of non-compliance; (d) ability to

pay, and (e) unique factors. The respondents' culpability in this matter merits an upward penalty adjustment. Prior to receiving their inspection certifications from DMV, the respondent-inspectors received training that demonstrated the correct use of the NYVIP system. With respect to violator cooperation, the respondents were discovered to be violating the law by an investigation by DEC and DMV and therefore, there is no evidence of cooperation. None of the respondents attended the hearing. As for ability to pay, no evidence was presented by the respondents of their financial status.

The Civil Penalty Policy does provide for the consideration of "unique factors" in calculation of the penalty; however, I could find none here.

Concerning each of the respondent- inspectors, they should be fined based upon the number of illegal inspections they each performed except for Mr. Najmi who I find accountable for all of the illegal inspections based upon his authority and involvement in the activities of the shop. As documented in exhibits 21-22, Mr. Najmi individually performed the majority of the illegal inspections but is also responsible for all of them due to his role within the corporation. Mr. Yinusa performed approximately 30% of the inspections; and Mr. Wongbong performed a little less than 10% of them. Thus, the penalties assessed against respondents Wongbong and Yinusa should be assessed based upon their individual illegal activities.

Penalty Recommendation

For the 979 separate violations of 6 NYCRR § 217-4.2, UNS and Mr. Najmi should be jointly assessed a penalty of \$100,000. Mr. Yinusa should be fined \$30,000; and Mr. Wongbong should be fined \$10,000. As explained above, the violations are extremely serious as they undermine a key aspect of New York's efforts to reduce ozone pollution which causes health and property damage. The respondent-inspectors were clearly aware that they were performing improper actions given the training they received, their failure to connect the NYVIP system to the automobiles that were to be inspected, and their affirmative fraudulent activity in using a simulator during the inspections. However, the fact that UNS is a small business and the dismissal of the second cause of action, I am recommending a substantially lower penalty than what was proposed by staff. I believe that despite the lower penalty, these sums are substantial ones for a small company and will send a message to the inspection station community that fraudulent inspections will not be tolerated.

CONCLUSIONS

1. From February 21, 2009 to November 5, 2009, the respondents, UNS Auto Repair, Inc., Masood H. Najmi, Fatai Yinusa, and Gary V. Wongbong used a simulator to perform OBD II emission inspections on 979 separate occasions.
2. This use of a simulator was in violation of 6 NYCRR § 217-4.2, which prohibits the operation of an official emissions inspection station using equipment and/or procedures that are not in compliance with DEC procedures and/or standards.

3. Masood H. Najmi, as the principal of UNS, and because of his involvement in the operation of the facility is jointly responsible with UNS for all the illegal inspections.

RECOMMENDATIONS

1. For the first cause of action, which alleges violation of 6 NYCRR § 217-4.2, respondent UNS and Masood H. Najmi should be jointly assessed a civil penalty of \$100,000, respondent Fatai Yinusa should be fined \$30,000; and respondent Gary V. Wongbong should be fined \$10,000. All penalties should be paid within 30 days of service of the Commissioner's order.
2. The second cause of action, which alleges violations of 6 NYCRR § 217-1.4, should be dismissed.
3. All charges against respondent George E. Ampratwum should be dismissed.

Hearing Exhibit List
Matter of UNS Auto Repair, Inc., et al.

- Ex. 1 - Notice of hearing and complaint dated August 18, 2010
- Ex. 2 – Answer dated October 18, 2010
- Ex. 3 – Statement of Readiness dated December 30, 2010
- Ex. 4 – Assignment letter from James T. McClymonds to Mr. Nesci dated February 4, 2011 assigning ALJ Buhrmaster
- Ex. 5 – Hearing notice dated March 28, 2011 from ALJ Buhrmaster to the parties
- Ex. 6 – Letter dated March 31, 2011 from ALJ Buhrmaster to the parties regarding adjournment
- Ex. 7 – Letter dated April 22, 2011 from ALJ Buhrmaster re: adjournment
- Ex. 8 – Letter dated June 2, 2011 from ALJ Buhrmaster rescheduling hearing
- Ex. 9 – Revised Notice of Enforcement Hearing dated January 18, 2012 advising the parties that the matter was reassigned to ALJ Goldberger
- Ex. 10 – the March 28, 2011 letter from ALJ Buhrmaster w/attached envelope addressed to Mr. Ampratwum indicating undeliverable from USPS
- Ex. 11 – the March 31, 2011 letter from ALJ Buhrmaster w/attached envelope addressed to Mr. Ampratwum indicating undeliverable from USPS
- Ex. 12 – the April 22, 2011 letter from ALJ Buhrmaster w/attached envelope addressed to Mr. Ampratwum at Fish Avenue indicating undeliverable from USPS
- Ex. 13 – the April 22, 2011 letter from ALJ Buhrmaster w/attached envelope address to Mr. Ampratwum at East 221st Street indicating undeliverable from USPS
- Ex. 14 – Original Facility Application for UNS Auto Repairs, Inc.
- Ex. 15 – Application for Certification as a Motor Vehicle Inspector – Najmi Masood
- Ex. 16 – Application for Certification as a Motor Vehicle Inspector – Gary V. Wongbong
- Ex. 17 - Application for Certification as a Motor Vehicle Inspector – George E. Ampratwum
- Ex. 18 – Application for Certification as a Motor Vehilce Inspector – Fatai Yinusa
- Ex. 19 – DMV Data
- Ex. 20 – DMV Data
- Ex. 21 – DMV Data – highlighted
- Ex. 22 – DMV Data - highlighted