

June 16, 2010

VIA CERTIFIED MAIL and E-MAIL

California Air Resources Board Members:

Ms. Mary D. Nichols, Chair
Dr. John R. Balmes, Ph.D. M.D.
Ms. Sandra Berg
Ms. Dorene D'Adamo
Hon. Ken Yeager, Santa Clara County Supervisor
Ms. Lydia H. Kennard

Hon. Ronald O. Loveridge, Mayor, City of Riverside
Ms. Barbara Riordan
Hon. Ron Roberts, San Diego County Supervisor
Dr. Daniel Sperling, Ph.D.
Dr. John G. Telles, M.D.

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Re: "Replacement Tran Report" on Premature Deaths in California Associated with PM2.5 Exposure

Dear Chairman Nichols and Board Members:

The purpose of this letter is to demand that all generally-accepted scientific standards are fully complied with prior to finalizing the "Replacement Tran Report."

The October 24, 2008 CARB Staff Report "Methodology for Estimating Premature Deaths Associated with Long-term Exposure to Fine Airborne Particulate Matter in California" (original "Tran Report") was admittedly flawed and unreliable. However, it still provided the primary public health justification for the Statewide Truck and Bus Regulation approved December 12, 2008. As you know, when fully implemented this regulation will cost all affected industries, by your own estimate, more than ten billion dollars in compliance actions. Given that the process used to produce the original Tran Report was severely flawed (both ethically and scientifically), it is imperative that the "Replacement Tran Report" be thoroughly vetted in an open, transparent manner by the unbiased scientists and the general public prior to Board acceptance.

As members of the impacted industries, we request that the final "Replacement Tran Report" meet the following minimum conditions:

1. Since this is a California regulation, the data used to support the report should be California-only data. It is unacceptable that U.S. EPA Integrated Science Assessment for Particulate Matter be "moved to become the basis for" the "Replacement Tran Report" because, in California, PM2.5 (a measurement of mass, not a substance) is not associated with increased mortality or any other significant public health issue.
2. The report should be initially issued in draft form, similar to the May 22, 2008 draft version of the Tran Report.
3. A Curriculum Vitae (CV) should be included for every person who contributes to the authorship of the "Replacement Tran Report."
4. There should be at least three months for public comment and CARB responses to those comments on the draft report.
5. The "Replacement Tran Report" should be based on all research studies published in peer reviewed journals and it should make reference to other major studies that are in progress and

should be reviewed by independent, impartial external experts with no ties, financial or otherwise, to either the Air Resources Board or affected industries.

6. These expert reviewers should be selected by an impartial authority, outside of CARB, such as the President of the University of California.
7. External experts should not review and evaluate the importance or validity of their own work or work of their coworkers on research or coauthors on publications.
8. Certain experts should be disqualified as expert reviewers, including those who were aware that PM2.5 was not associated with increased mortality in California but failed to say so, e.g., Drs. Michael Jerrett, C. Arden Pope, and Daniel Krewski.
9. All correspondence and commentary (including internal emails) between CARB and review panel members writing and reviewing the new report should be part of the public record, in compliance with the California Public Records Act.
10. Appropriate data sets for the accepted and approved studies used to create a new report and justify a regulatory regime should be available for review by the public.

Satisfaction of these conditions would go a long way toward restoring confidence in CARB and the CARB policy-making process, addressing and repairing CARB's currently perceived lack of trustworthiness in research and policy making and CARB's past unwillingness to seek and promote constructive input from the citizens of California and independent scientists regarding air pollution human health effects and implications for policy making and regulatory regimes. At this point any action that fails to incorporate the requested procedures above, or any CARB action to rush the final "Replacement Tran Report" in a closed-to-the-public process, will further diminish CARB's compromised reputation in the eyes of California citizens, the California Legislature, and the national scientific community. The following information serves as background on this critical issue.

BACKGROUND

Lead Technical Report Author Committed Credential Fraud

The scientific and public health basis for CARB's Statewide Truck and Bus Regulation (on-road in-use diesel regulation or "Truck Rule") is the October 24, 2008 CARB Staff Report on "Methodology for Estimating Premature Deaths Associated with Long term Exposure to Fine Airborne Particulate Matter in California" by lead author Hien T. Tran. However, Tran admittedly misrepresented his scientific qualifications and education. He did not in fact have a Ph.D. from U.C. Davis as he had originally claimed. Rather, Tran purchased a mail-order Ph.D. degree in June 2007 from "Thornhill University," which operates out of a New York City UPS Store. As documented in CARB's April 2009 Notice of Adverse Action, CARB found Tran guilty of "fraud, dishonesty and other failure of good behavior." Further, page 4 of the Notice states "Since you were the lead author and project coordinator of this report which was used to support the Regulation, your lack of credibility has called into question the credibility of the entire Regulation." However, despite fundamentally misrepresenting his credentials, Hien Tran still remains employed by the California Air Resources Board. We find it unacceptable that a 11-year employee who is very familiar with CARB's employment guidelines, was in fact only demoted and his salary was cut by only \$1,066 per month, down to \$7,899 per month (\$94,788/yr.). We remain curious as to why CARB continues to protect this employee.

Key CARB Personnel Knew About Fraud, Yet Failed to Disclose Crucial Information to the Full CARB Board and Public Prior to Important Vote, and Subsequently Perpetrated a Cover-up

Prior to approving the extremely costly Truck Rule on December 12, 2008, which affects nearly a million trucks and buses in the state, key CARB officials including Chair Mary Nichols, Executive Director James Goldstene, Chief Legal Counsel Ellen Peter and at least one Board Member, Dr. John Balmes, had actual knowledge that the project leader Hien Tran had falsified his Ph.D. credentials. In addition, on

December 3, 2008, Board Members Ronald Loveridge and Barbara Riordan were directly informed by four California scientists that Tran had misrepresented his Ph.D. However, the staff and Board Members chose to conceal this crucial information from the full 11-member Board, as well as the public, until after the Board adopted the controversial Truck Rule. Essentially, CARB purposefully withheld fundamental misrepresentations from the public in order to pass this contentious and costly rule.

In a November 10, 2009 email message to Board Member Dr. John Telles, CARB Chair Mary Nichols admitted she knew of the falsified credentials prior to the Board's vote on December 12, 2008. She also acknowledged that Tran's conduct was illegal and unethical, and admitted that it was a "mistake" to have concealed the information from the other Board Members. Ms. Nichols justified her cover-up by claiming to know that Tran's report was true despite his lies, and therefore decided that the vote should go forward without revealing the "distraction" of his misrepresentations. Dr. Telles filed a formal, November 16, 2009 complaint with CARB Chief Legal Counsel Ellen Peter claiming that key CARB officials had actual knowledge that Tran lied about his qualifications on or before December 10, 2008.

Extreme Negative Economic Impact of the Rule

It is imperative to state the severe economic consequences this rule will have on California's already struggling businesses and taxpayers. By CARB's own admission, the on-road rule alone will result in a \$5.5 billion cost to California's businesses, and tens of millions of dollars to public school districts. Based on CARB's past documented regulatory underestimates, industry now calculates the costs of this rule alone to be over \$20 billion, four times CARB's original estimate. Given the current economic collapse in this state, this regulation is likely to become the premiere "job-killer" government regulation of all time that will cause businesses that are already operating under thin profit margins to either shut down or avoid business in California altogether. Certainly a rule with such huge financial consequences deserves a fair, unprejudiced reevaluation and substantiated scientific justification.

CARB Agreed to Withdraw and "Redo" the Tran Report at its December 9, 2009 Board Meeting

In light of the fraudulent nature of the original Tran Report, the Board directed staff to withdraw and redo the report, with Chair Nichols stating "With today's set of actions, we confidently set out to revalidate the science supporting our rules..." (CARB Press Release, 12/9/09) In fact, Governor Schwarzenegger publicly stated in regards to the scandal, "It is clear...clear responsible action is needed." (*Capitol Weekly*, 12/17/09) Furthermore, CARB spokeswoman Mary Salas Fricke specified that the "Replacement Tran Report" would be completed by April, "There is going to be a series of workshops and an update to the board in April with some new provisions and a new health report." (*Capitol Weekly*, 12/17/09) To date, the above statements appear to be no more than mere hot air. The April date came and went without any mention of the "Replacement Tran Report." Compliance with our above-mentioned conditions will certainly be necessary to "revalidate the science supporting our rules" as Chair Nichols desires.

The February 26, 2010 CARB Science Symposium Showed that the Substantive Contents of Tran's Report Likely Cannot be Recreated Without Fraud

While Tran's lack of adequate credentials should in itself call into question the validity of his report, independent scientists continue to dispute the validity of his original report based on a number of reasons, including:

1. Substantial epidemiologic evidence from six different sources indicates that there is no current relationship between PM2.5 (specifically diesel PM) and premature deaths in California. The EPA's own (most recent 2005) California source data of PM2.5 indicates that on- and off-road diesel powered vehicles (this includes on-road diesel trucks and cars) account for just over 10% of the total PM2.5 in California. Consequently fully regulating the existing fleet of on-road diesel

powered vehicles will have virtually no quantifiable impact on reducing total PM2.5 levels in CA, but will cost in excess of \$20-billion to implement or \$896,740/ton.

2. The key epidemiologists relied upon by CARB in the October 24, 2008 CARB Staff Report (Drs. C. Arden Pope, Michael Jerrett, Daniel Krewski, and Michael J. Thun) have clear conflicts of interest because they are recipients of CARB and EPA funding, and/or were also involved in review of report. Furthermore, they have repeatedly refused to allow reanalysis of the key American Cancer Society Cancer Prevention Study (CPS II) database, which is in violation of Federal Data Access Act.
3. CARB has not considered several factors relevant to the justification of their diesel emission regulations. California has the fourth lowest total age-adjusted death rate of all 50 states; California is currently experiencing 13% unemployment and 25% underemployment, the highest levels since the Great Depression; none of the epidemiologic evidence used by CARB satisfies the Federal Judiciary Center standards for establishing a causal relationship between PM2.5 and premature deaths.
4. On May 22, 2008 a Draft CARB Report on PM2.5 & Premature Deaths by Hien T. Tran was published. On July 11, 2008 Tran conducted a detailed teleconference with Drs. Enstrom, Pope, Jerrett, and other key scientists who explained their data which was extremely relevant to the rule.
5. On July 11, 2008, 148 pages of mostly critical scientific comments were submitted to CARB in response to the May 22, 2008 Draft CARB Report. The October 24, 2008 Final CARB Report (Tran Report) does not properly include or address the critical comments by Drs. Enstrom, Moolgavkar, North, Dunn and Lipfert, and others.
6. CARB's February 26, 2010 Symposium on "Estimating Premature Deaths from Long-term Exposures to PM2.5" included comments by Dr. Jerrett of UC Berkeley, Dr. Enstrom of UCLA, and many other experts on PM2.5 health effects. Among other Symposium findings, based on the CA CPS I and CA CPS II results, by far the two largest California-specific studies, the number of "premature deaths" associated with PM2.5 exposure is zero, not the thousands of deaths presented to the CARB members when it voted to approve the off-road and on-road diesel regulations. Furthermore, Dr. Jerrett stated in regards to PM2.5 "...we are getting a null result for all causes now and it's because we do see this negative association with all cancer." Dr. Enstrom agreed, "In terms of total deaths, which are what are used to calculate premature deaths by the Air Resources Board, if I didn't misinterpret what he [Dr. Jerrett] said, there was no effect – very consistent with my findings."

CARB Staff Continues to Make Scientific and Data Mistakes on the Diesel Rules

In April 2010, more evidence was unveiled to further damage CARB's already shaky reputation. A computer model that CARB used to justify their off-road diesel regulations mistakenly attributed at least twice as much pollution to the off-road equipment as they actually produce and, in the case of the off-road rule, the error was up to 379 percent. CARB is still attempting to discern the full impacts of this "mistake," but clearly it means that the construction industry is producing only a fraction of the pollutants that CARB believed was the case when it adopted the off-road regulations in 2007. This display of incompetence could not have come at a worse time for CARB's credibility with the public.

Furthermore, it must be noted that Hien Tran's work was also fundamental to the justification of this off-road regulation. Tran was the "Primary Author" of the 2006 report "Quantification of the Health Impacts and Economic Valuation of Air Pollution from Ports and Goods Movement in California." This Tran report provided the methodology for the 2006 CARB report "Emission Reduction Plan for Ports and Goods Movement in California." (Appendix A). Per CARB's own admission in the Final Statement of Reasons for the off-road rule, "The methodology used to quantify health impacts was the same as that used in the Emission Reduction Plan for Ports and Goods Movement in California." (FSOR, page 44). Additionally, the off-road rule's technical supporting document "Assessment of Health Impacts from Off-

Road Diesel Vehicles” relied solely on this same Tran methodology (Appendix C, footnote 1). As you can see, Tran’s “work” is inextricably intertwined within the diesel regulations. To further withhold from the public a legitimate, full-vetted analysis is completely inexcusable.

REQUEST

Given CARB’s recent reputation for creating scientifically-unsupportable regulations, we once again must demand that the “Replacement Tran Report” be completed in an open and above-board manner so that California’s citizens can rest assured that all costly regulations are 100% necessary and justified. We call for you, as Board Members, to insist that CARB staff meet each and every one of the ten conditions detailed on page one of this letter prior to placing the “Replacement Tran Report” before you for adoption.

Respectfully,

From all signatories of interest below,



Lee Brown, Executive Director
CA Dump Truck Owners Association (CDTOA)



Bill Davis, Executive Vice President
Southern California Contractors Association (SCCA)



Skip Brown, Owner
Delta Construction



Jay McKeeman, Vice President, Government Relations
California Independent Oil Marketers Association (CIOMA)



Bryan Bloom, Owner
Priority Moving, Inc.



Mike Lewis, Senior Vice President,
Construction Industry Air Quality Coalition (CIAQC)



Steve Weitekamp, President
California Moving & Storage Association (CMSA)

CC: The Honorable Arnold Schwarzenegger, Governor of California
Jerry Brown, Attorney General
Ms. Linda Adams, Secretary, California Environmental Protection Agency
Members, California State Legislature