

John Telles

November 16, 2009

Ellen Peters, Chief Counsel
Office of Legal Affairs
California Air Resources Board

Dear Ellen,

My review of the events and circumstances preceding the December 12, 2008 vote on the Truck Rule has revealed documented facts and pertinent information not brought to the attention of Board Members prior to the Vote on the Truck Rule. Key CARB personnel knew that the Project Coordinator and Lead Author (the Individual) of the report, "Methodology for Estimating Premature Death Associated with Long-term Exposure to Fine Airborne Particulate Matter in California" had misrepresented his credentials by falsely claiming that he had a Ph.D. in Statistics from the University of California at Davis. Key CARB personnel failed to inform the full Board and the public of this information.

In CARB's own internal documents this information was deemed pertinent. CARB, in a communication sent to the Individual stated, "your dishonesty regarding your education has called into question the validity of the report "Methodology for Estimating Premature Death Associated with Long-Term Exposure to Fine Airborne Particulate Matter in California" in which you were the Project Coordinator and Lead Author. This report in turn supports other controversial and critical regulations adopted by Air Resources Board." (Exhibit #1) The Methodology Report was pertinent to the Truck Rule because it supports Appendices D (Health Impacts from On-Road Diesel Vehicles) and Appendices E (Health Risk Assessment Methodology) which make the fundamental argument for the reason for rule making (Exhibit #2).

This information is material to the Vote because had I as a Board Member been informed of this information, I would have and perhaps other Board members would have moved to suspend the Vote. I believe that it is the ethical if not legal obligation for Staff and Board Members to inform the whole Board of all pertinent information prior to a Vote on a State Regulation so that a Board Member may make an informed decision when casting a vote.

The following is a brief outline of information that came to the attention of key CARB personnel prior to the Vote:

In a letter dated July 7, 2008 sent to Governor Schwarzenegger, Dr. Stanley Young of the National Institute of Statistical Science stated that none of the authors of the draft "Methodologies for Estimating Premature Death Associated with Long-Term Exposure

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to Fine Airborne Particulate Matter in California” are professional statisticians (Exhibit #3). The duty of drafting a response to this inquiry was given to the Project Coordinator and Lead Author of the Report, the very person who later confesses that he misrepresented his credentials. (Exhibit #4). In this draft, the Lead Author falsely claims that he has a Ph.D. from University of California at Davis. This drafted letter, dated November 4, 2008, was signed by the Secretary of the California EPA and was sent to Dr. Young (Exhibit #5). To date, Dr. Young has not received a letter from the Secretary of the California EPA correcting this false claim (Exhibit #6).

On December 3rd and 4th, 2008, a professor from UCLA communicated to three CARB Board members alleging that the Individual did not have a Ph.D. in Statistics from UC Davis (Exhibit #7). At least one Board Member called Senior Staff at CARB and an investigation was initiated. On December 8, 2008, the Chief of the Research Division asked the Individual if he had a Ph.D. in Statistics from UC Davis (Exhibit #8). The Individual on the evening of December 10, 2008, confessed to the Chief of the Research Division that he did not have such a credential. The following morning, the day the ARB had convened to deliberate on the Truck Rule, this Chief informed the Executive Officer, the Chief Deputy Executive Officer, the Deputy Executive Officer, the Chief of the Heavy Duty Diesel In-Use Strategies, the Chief of the Mobil Source Control Division, the Chief of the Health and Exposure Assessment Branch and at least one Board Member of the Individual’s confession (Exhibit #9). This information was not, however, relayed to the full Board.

It was not until nine months later at the public meeting of CARB in Diamond Bar on September 24, 2009, after public testimony raised this issue, that Staff informed the Board for the first time that the Project Coordinator and Lead Author of a supporting document of the Truck Rule had falsified his credentials (Exhibit #11). At that time Staff made no mention of the fact that they possessed this information prior to the Vote on the Truck Rule. Last week, on November 11, 2009, I learned that the Chair of CARB was also aware of this information prior to the Vote (Exhibit #10). Thus, neither the Staff nor the Board Chair informed the full board of this discovery prior to the Vote. The Public, of course, was also not informed.

In a recent personal communication to me from a Board Member who knew at the time of the Vote that this information was withheld, the Board Member stated, “I also realize that it was wrong not to have informed you and other Board Members about the situation before we acted on the Truck Rule, and at least given you the chance to decide for yourselves whether a delay was needed.” (Exhibit #10).

As a Board Member of the California Air Resources Board I realize that the State of California has vested in me the responsibility to review and vote on regulations that may have a significant impact on the economy and the health of the people of California. To

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execute my duties it is imperative that I be informed of all pertinent matters relating to regulations upon which I will be voting.

Based upon the foregoing facts documenting that key CARB personnel withheld pertinent information from the Board and the Public I believe the legitimacy of the Vote may be in question. The scientific validity of the Report is not the issue, but rather at issue is a fundamental violation of procedure. Failure to reveal this information to the Board prior to the vote not only casts doubt upon the legitimacy of the Truck Rule but also upon the legitimacy of CARB itself.

As legal counsel for the Board and in view of your wisdom, experience and knowledge, I seek your opinion on this matter. Not taking action seems unacceptable in light of what appears to be a violation of procedure with both ethical and perhaps legal implications. How we handle this challenge will reflect on the future credibility of CARB. I believe that CARB needs to seize the initiative and take steps to protect and preserve the integrity of CARB, its Board Members and the decision making process.

I await your response.

Sincerely,

John G. Telles, M.D., Board Member
California Air Resources Board

Cc: California Air Resource Board Members

Statement of Fact Exhibits

- Exhibit # 1 Notice of Adverse Action Dated April 9, 2009
- Exhibit # 2 Proposed Regulation For In-Use On-Road Diesel Vehicles, October 2008
- Exhibit # 3 Letter to Governor Schwarzenegger from Dr. Stanley Young, July 7, 2008
- Exhibit # 4 Assignment to Draft response by Individual
- Exhibit # 5 Letter to Dr. Stanly Young from Secretary Adams, November 4, 2008
- Exhibit #6 Communication from Dr. Stanly Young, November 2008
- Exhibit #7 Communication from Chief Research Division, December 8,2008
- Exhibit #8 Communication from James E. Enstrom, Ph.D., October 28, 2008
- Exhibit #9 Communication from Chief of Research Division, December 11 2008
- Exhibit #10 Personal communication from Board Member
- Exhibit #11 Minutes to Board Meeting, September 9, 2009.