

Attn: Chris Reed

NOTICE OF ADVERSE ACTION

Hien T. Tran
Air Pollution Specialist
California Air Resources Board
1001 I Street, Sacramento, CA 95812

XXX-XX-0295

You are hereby notified that, pursuant to Government Code Section 19574, adverse action is being taken against you as follows:

I

NATURE OF THE ADVERSE ACTION

You are hereby suspended in your position as an Air Pollution Specialist (APS) position with the California Air Resources Board for a period of sixty days.

II

EFFECTIVE DATE

This suspension shall be effective start of business April 22, 2009 and shall end at the close of business on June 19, 2009.

III

STATEMENT OF CAUSES

This action is taken against you for reasons relating to Government Code section 19572:

- (a) Fraud in Securing Employment
- (f) Dishonesty.
- (t) Other failure of good behavior either during or outside of duty hours which is such a nature that it causes discredit to the appointing authority or the person's employment.

IV

STATEMENT OF FACTS

The general qualifications required for all employees in the state civil service include honesty, integrity, and good judgment. You have failed to demonstrate these qualifications in your position as an Air Resources Supervisor I. Your dishonesty regarding your education has called into question the validity of the report "Methodology for Estimating Premature Deaths 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 (ARB). Your actions could create a long lasting and damaging reflection on ARB and the California Environmental Protection Agency.

1. In February 2003, you joined the ARB Research Division's Health and Ecosystems Assessment Section, as an Air Pollution Specialist (APS). On the application for this APS position, dated December 23, 2002, you listed an expected Ph.D. from UC Davis. (Exhibit #1)
2. On or about July 18, 2007, you submitted a signed STD 678 State of California Examination and/or Employment Application (Application) for the Air Resources Supervisor I (ARS1) position in the Health and Ecosystems Assessment Section of the Research Division. On the Application, you listed a Ph.D. in Statistics and indicated that it was completed from the University of California, Davis (UC Davis) in 2007. The Application contains a certification with the following statement:

I certify under penalty of perjury that the following information I have entered on this application is true and complete to the best of my knowledge. I further understand that any false, incomplete, or incorrect statements may result in my disqualification from the examination process or dismissal from employment with the State of California. I authorize the employers and educational institutions identified on this application to release any information they may have concerning my employment or education to the State of California. (Exhibit #2)

Because you had not actually completed the Ph.D. from UC Davis in 2007, by signing the application under penalty of perjury and certifying that the information contained on it was true, you consequently falsified your application and therefore misrepresented the facts regarding your education.

ARB did not discover until December 10, 2008, that you had received an on-line Ph.D. from Thornhill University on June 28, 2007 (Exhibit #4). The fact is that you obtained a Ph.D. from Thornhill University on June 28, 2007,

prior to signing and submitting your Application for the ARS 1 position and you did not include this information on your Application.

3. On or about August 10, 2007, you interviewed for the Air Resources Supervisor I position. During the interview you stated that you planned to submit two papers for publication and clarified either you had just submitted your dissertation for the Ph.D. or were in the process of submitting the Ph.D. dissertation to UC Davis (or words to that effect). (Exhibit #5, #6, and #7)
4. On September 10, 2007, you were appointed to the ARS1 position. Soon after, you told your supervisor, Linda Smith, Chief of the Health & Exposure Assessment Branch, that you had recently received your Ph.D. You also began using the Ph.D. title on two staff reports (Initial Statement of Reasons for proposed Rulemaking and Proposed Regulation for Dryage Trucks and Regulations to Reduce Emissions from Diesel Auxiliary Engines on Ocean-Going Vessels While AT-Berth at a California Port) (Exhibit, #8, #9), and on your business cards and e-mail signature (Exhibit #9a, & #9b).

Your Supervisor, Linda Smith, posted an announcement to all ARB Staff on the Air Resources Board Inside (ARB's intranet site). The posting, dated September 12, 2007, announced your appointment as manager in the Health and Ecosystem Assessment Section in the Research Division and stated you recently earned a Ph.D. in Statistics from UC Davis (Exhibit #10). Because you told your supervisor that you had recently earned your Ph.D., she logically assumed that the degree was from UC Davis. In addition, that was the information listed on your application and what was discussed at the hiring interview. Once your appointment was posted, you made no attempt to correct the misinformation.

5. On or about September 5, 2008, you were assigned to draft a response letter for Cal/EPA Secretary Linda Adams' signature to Stanley Young of the National Institute of Statistical Sciences (Exhibit #11). Mr. Young stated in a letter to Governor Schwarzenegger dated July 7, 2008 (Exhibit #12), that none of the authors of the draft "Methodology for Estimating Premature Deaths Associated with Long-term Exposure to Fine Airborne Particulate Matter in California," in which you were the project coordinator and lead author, are professional statisticians. (Exhibit #13)

The draft response that you prepared for ARB's Agency Secretary to sign dealt, among other things, directly with the issue of the professional background of the authors of the report including yourself. Specifically, the final reply letter signed by Secretary Adams stated that you, as the lead author and project coordinator, held a doctorate degree in statistics from UC Davis (Exhibit #14). The Assignment Tracking Form for the draft reflects your initials dated September 9, 2008, when you first drafted the response and again September 10, 2008, when you revised it for review by Research Division Chief, Bart Croes (Exhibit #11). The final letter indicates that you

received a blind carbon copy. At no time did you correct the inaccuracy of your degree contained in the final letter.

6. Dr. James Enstrom, along with Dr. Anthony Fucaloro, Dr. Matthew A. Malkan, and Dr. Robert F. Phalen, placed into the Regulation record on December 3, 2008, a request to postpone and reassess California Air Resources Board Diesel Regulations (Exhibit #16). Specifically, Dr. Enstrom's comments list his concerns regarding the final October 24, 2008, CARB Staff Report "Methodology for Estimating Premature Deaths Associated with Long-term Exposure to Fine Airborne Particulate Matter in California" (PM2.5 Mortality Report) in that the authors have no relevant peer reviewed publications and lead author (Hien Tran) has misrepresented his Ph.D. (Exhibit #17). 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.
7. On Friday, December 5, 2008, Bart Croes, ARB's Research Division Chief (Chief) was informed by James Goldstene, ARB's Executive Officer, that Professor James Enstrom, an epidemiologist with the Jonsson Comprehensive Cancer Center at UCLA, had raised an issue regarding the validity of your Ph.D. in a briefing for Board Member John Balmes on the proposed In-Use On-Road Diesel Vehicles Regulation (herein after Regulation) (a.k.a. Statewide Truck and Bus Regulations). (Exhibit #15) The proposed Regulation is a regulation to help reduce emissions of diesel particulate matter, other criteria pollutants, and greenhouse gases from in-use heavy-duty diesel-fueled vehicles. Because the implications of the Regulation place additional requirements on truck and bus companies, it is critical that the research behind the regulation is considered valid.
8. On Monday morning, December 8, 2008, the Chief left a voicemail for you to call him while you were attending an off-site management training session. In addition, the Chief did some internet searching to try and find your Ph.D. from UC Davis, but was unsuccessful. You later e-mailed the Chief and stated you had called the person in charge of the alumni web page at UC Davis to have the information updated and you were told it should be ready in one or two days. The Chief replied with an e-mail asking for a paper copy of your Ph.D. degree or a signed thesis page. You responded by saying you would make some phone calls and get back to him the next day, after which he requested that you call him the following morning (or words to that effect). (Exhibit #18)

You continued to avoid telling the Chief the truth concerning your lack of a Ph.D. from UC Davis by indicating you were still working on getting the verification documentation he was requesting from UC Davis, perpetuating the deception.

9. On December 10, 2008, you called the Chief and requested to meet with him in the late afternoon, after your training class. At that time, you admitted that you did not have a Ph.D. from UC Davis, but rather an on-line Ph.D. in Applied Statistics from Thornhill University, dated June 28, 2007, or words to that effect. In addition, you stated that you received the certificate from Thornhill University after listing your accomplishments and paying a \$1,000 fee (or words to that effect).

You later provided a copy of this on-line degree to the division (Exhibit #4). A review of the Council for Higher Education Accreditation (CHEA) website of the listing of colleges and universities revealed that Thornhill University is not accredited by CHEA (Exhibit #20). In addition, you stated that while you had obtained your Master's Degree in Statistics from UC Davis, passed the Ph.D. qualifiers, and had some publications with your advisor, you had not worked on your Ph.D. for the past year because you were unable to satisfy the requirements for a break through in some theoretical aspects of statistics or words to that effect.

10. On or about December 10, 2008, in a comment letter for the Regulation, James Enstrom, a UCLA Professor, submitted a seven page analysis to ARB titled "Scientific Reasons to Postpone Adoption of Proposed STATEWIDE TRUCK AND BUS REGULATIONS." Specifically, he called into question your credentials. Mr. Enstrom stated that he searched and found no evidence of a Ph.D. in Statistics from UC Davis or any dissertation on any subject from any university for you or words to that effect. He stated this issue has direct relevance to the honesty of Tran and the scientific integrity of the draft and final reports on which you were the lead author or words to that effect. (Exhibit#21)

In an internal response, titled "ARB Staff Response on Scientific Integrity of the Report on the Relationship between Diesel Soot and Premature Death in California," dated December 19, 2008, ARB stated they stood by the data and conclusions contained in the PM 2.5 Mortality Report supporting the Regulation" due to the rigorous internal as well as external peer review that was done. (Exhibit #22)

ARB firmly stands behind the integrity of our report, having gone through an independent peer review, with all reviewers finding our methodology scientifically sound and reasonable. However, because the report provides input into the Regulation, which in turn results in increased regulations to the trucking industry (whose affects are far reaching), the credibility of the lead author and project coordinator is paramount. Due to your misrepresentation of your Ph.D., management was led to believe that you had attained your Ph.D. from UC Davis. Consequently, when your credentials were called into question, ARB was placed in an untenable position to defend your credentials with inaccurate information.

11. On December 11, 2008, Professor Samaniego from UC Davis called the Chief back and confirmed your Master's degree and that you had also passed the qualifiers for the Ph.D. He also stated that he had published a paper with you as well as you had worked on some presentations together. Furthermore, although he still considered you an active student, he could not recall the last time he had seen you, but that it had been at least a couple of years, or words to that effect. On December 12, 2008, a follow up letter was sent from the UC Davis Graduate Programs Coordinator confirming you advanced to Ph.D. candidacy in 1998 but that you did not complete the doctoral dissertation. (Exhibit #23)

12. Beginning on or about December 17, 2008, ARB's Office of Communication received numerous contacts from the media as described below. The Director of the Office of Communication (Director) Leo Kay was contacted by Chris Reed, Editorial Writer of the San Diego Union Tribune on December 18 & 19, 2008, regarding Dr. Enstrom's comments that an ARB Research Division Supervisor (Hien Tran) who worked on the report falsified claims that he had a Ph.D. from UC Davis and asked what ARB was planning to do about it (Exhibit #24). On December 18, 2008, Dr. Enstrom's comments were posted on SignONSanDiego.com, a blog site on San Diego's Union Tribune in an article titled "Breaking News: Air Board Investigating Whether Scientist on Diesel Regs Lied About His Ph.D." (Exhibit #25). An additional article was posted by Mr. Reed titled "CARB Ignored Well-Credentialed Experts on Diesel Regs, Too—and Its Own Expert May Have a Scandal of His Own" (Exhibit #26). On January 6 & 20, 2009, the Director received additional e-mails from Mr. Reed inquiring about the investigation into your Ph.D. from UC Davis. Subsequently he posted an article titled "Nichols Acknowledges Deception Affects 'Credibility' of Air Board—but Won't Say What She's Doing about It" on January 21, 2009 (Exhibits #27 & #28).

On February 3, 2009, ARB's Deputy Ombudsman, Phil Loder, received a call from Mr. Anthony Fucaloro inquiring about your academic qualifications. Mr. Fucaloro was one of the individuals that placed into the Regulation record on December 3, 2008, a request to postpone and reassess California Air Resources Board Diesel Regulations (Exhibit #29). In addition, on February 12 & 13, 2009, Mr. Reed contacted the Director again for an update on the investigation and to ask whether your work has been double-checked. Then on February 12, 2009, he posted an article titled "Deceptive Scientist Still Has Job at Air Board, Which Still Stonewalls on the Scandal" (Exhibits #30 & #31).

On March 11 & 13, 2009, Mr. Reed made several inquiries in response to the Director notifying him that you do not have a Ph.D. in Statistics from UC Davis but rather one from Thornhill University (Exhibit #32). Then on March 14, 2009, a blog titled "Air Board's Shame" released this information and referred to Thornhill University as a "distant learning" diploma mill and again

questioned the scientific integrity of the PM 2.5 Mortality Report in which you were the lead author, or words to that effect (Exhibit #33).

On March 9, 2009, the Director was contacted by a Lois Henry, an editor at the Bakersfield Californian to inquire about ARB's peer review process. During the following week the Director spoke with and emailed this editor more than a dozen times. On March 15, 2009, she posted an article titled "Dodgy Science Strangles Industry" on the paper's blog site. It stated that "CARB's lead researcher, Hien Tran, who wrote the report on which diesel rules are based lied about having a Ph.D. in Statistics from University of California, Davis" (Exhibit #34).

Because of your dishonesty, as the lead author on a critical report, titled "Methodology for Estimating Premature Deaths Associated with Long-term Exposure to Fine Airborne Particulate Matter in California," and the rules and regulations it directly affects, ARB's credibility has been called into question. Although ARB firmly stands behind both their methodology and the rigorous peer and scientific review process, your dishonesty has opened the door to unnecessary criticism due to the impact the rules and regulations have on a variety of industries.

13. On or about December 17, 2008, after meeting with the Chief concerning the issue of your Ph.D., and in particular the article on the web, you sent an e-mail stating you were leaning towards stepping down for the sake of the agency's reputation and admitted that this lapse in judgment was the biggest error you've ever made or words to that effect. (Exhibit #35)
14. On December 19, 2008, you submitted a voluntary resignation from your managerial position as an ARS1 under the condition that you could continue your employment in ARB's Research Division as an Air Pollution Specialist, Range C, a two-level demotion. In addition, in your resignation letter to your supervisor Linda Smith, you apologized for the current circumstances or words to that effect. (Exhibit #36)
15. On December 23, 2008, Sheryl Brooks, Chief of ARB's Human Resources Branch, sent a memo in response to your conditional resignation. In it she stated that she had accepted your voluntary demotion to an APS, Range C, however she also advised that pending further investigation, ARB may pursue further action up to and including dismissal. (Exhibit #37)

V

APPEAL RIGHTS

1. Right to respond to appointing power.

In accordance with the state Personnel Board 52.3 (Skelly Rule), you are entitled to at least five (5) working days within which to respond to this notice. You may respond orally or in writing to prior to April 22, 2009, which is the effective date of this action. If you wish to respond you may do so to:

Vicki Vandergriff
Deputy Director, Administrative Services Division
Department of Toxic Substance Control
Office Location: 1001 I Street, 21st Floor
Sacramento, 95812
Phone Number: (916) 327-1192

You are entitled to a reasonable amount of State time to prepare your response to the charges. You are not entitled to a formal hearing with examination of witnesses at this stage of the proceedings. However, you may be represented by another in presenting your response. The appointing power may sustain, amend, modify, or revoke the adverse action in whole or in part.

2. Right to Appeal to the State Personnel Board.

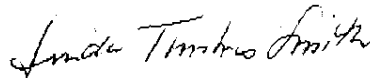
Regardless of whether you respond to these charges to the appointing power, you are advised that you have the right to file a written answer to this notice with the State Personnel Board, 801 Capitol Mall, Sacramento, California 95814, not later than thirty (30) calendar days after the effective date of this action. An answer shall be deemed to be a request for hearing or investigation as provided in Section 19575 of the Government Code. If you answer as provided, the Board or its authorized representative shall, within a reasonable time, hold a hearing and shall notify the parties of the time and place thereof. If you fail to answer within the time specified, the adverse action taken by the appointing power shall become final.

You are responsible for notifying the State Personnel Board and your appointing power of any changes in your address that occur after the effective date of this adverse action.

3. Right to Inspect Documents.

Copies of any documents or other materials giving rise to this adverse action are attached for your inspection. This documentation is not being provided to the State Personnel Board in advance of any appeal hearing which may be scheduled.

Dated: April 9, 2009



Linda Smith, Chief, Health & Exposure
Assessment Branch, Air Resources Board

List of Exhibits:

- Exhibit #1: Application for position of an Air Pollution Specialist, dated December 23, 2002
- Exhibit #2 Standard State Application for position of an Air Resources Supervisor 1, dated July 18, 2007, including certification statement
- Exhibit #3 Resume submitted with application for the Air Resources Supervisor 1 position
- Exhibit #4 Copy of diploma from Thornhill University for a Ph. D. in Applied Statistics
- Exhibit #5 Notes taken by Peggy Jenkins at interview for ARS 1
- Exhibit #6 Notes taken by Bart Croes at the interview for the ARS 1
- Exhibit #7 Notes taken by Linda Smith at the interview for the ARS 1
- Exhibit #8 ARB Staff Report on Proposed Regulation for Drayage Trucks
- Exhibit #9 ARB Staff Report Regulations to Reduce Emissions from Diesel Auxiliary Engines on Ocean-Going Vessels While At-Berth at California Port
- Exhibit #9a E-mail from Mr. Tran to his supervisor, Linda Smith, including Ph.D. on his signature block
- Exhibit #9b Confirmation of the approval on October 3, 2007 for the business cards order for Hien Tran, Ph.D.
- Exhibit #10 Announcement of ARS1 appointment, dated September 12, 2007, announcing appointment of Dr. Hien Tran as manager of the Health & Ecosystems Assessment Section
- Exhibit #11 Assignment tracking form used for the drafted response letter from Linda Adams to Stanley Young
- Exhibit #12 Letter sent from Stanley Young, of the National Institute of Statistical Sciences, to Governor Schwarzenegger, dated July 7, 2008
- Exhibit #13 Draft of Staff Report on Methodology for Estimating Premature Deaths Associated with Long term Exposures to Fine Airborne Particulate Matter in California, May 22, 2008
- Exhibit #14 Final Letter sent from Linda Adams to Stanley Young
- Exhibit #15 Staff Report for the Proposed Regulation for In-Use On-Road Diesel Vehicles, October 2008 (including technical support document and appendices on CD)
- Exhibit #16 Request to Postpone and Reassess CARB Diesel Regulations, dated December 3, 2008
- Exhibit #17 Staff Report on Methodology for Estimating Premature Deaths Associated with Long term Exposures to Fine Airborne Particulate Matter in California, October 24, 2008
- Exhibit #18 E-mail between Mr. Tran and the Chief concerning verification of his Ph. D. from UC Davis
- Exhibit #19 E-mail from Chief to EO notifying them Mr. Tran admitting to not having Ph.D. from UC Davis
- Exhibit #20 A list of Colleges and Universities not accredited by the Council for Higher Education Accreditation (CHEA)

- Exhibit #21 James Enstrom letter dated December 10, 2008, titled "Scientific Reasons to Postpone Adoption of Proposed Statewide Truck and Bus Regulations
- Exhibit #22 ARB Staff Response on Scientific Integrity of the Report on the Relationship between Diesel Soot and Premature Death in California", dated December 19, 2008
- Exhibit #23 Letter from Peter Scully, UC Davis Graduate Programs Director verifying Mr. Tran did not complete his doctoral dissertation
- Exhibit #24 Documentation of communication between the Chris Reed of the San Diego's Union Tribune and ARB's of Communication regarding Tran's false claims of a Ph.D. from UC Davis. (December)
- Exhibit #25 Blog titled "Breaking News: Air Board Investigating Whether Scientist on Diesel Regs Lied about his Ph.D." posted on OnSanDiego.com
- Exhibit #26 Blog Titled "CARB Ignored Well-Credentialed Experts on Diesel Regs, too—and Its Own Expert May Have a Scandal of His Own Posted on OnSanDiego.com
- Exhibit #27 E-mails between Chris Reed of the San Diego's Union Tribune and ARB's Director of Communication regarding an update of the investigation into Tran's Ph.D. (January)
- Exhibit #28 Blog titled Nichols Acknowledges Deception Affects 'Credibility' of Air Board—but Won't Say What She's Doing about It" was posted on January 21, 2009
- Exhibit #29 Email from Phil Loder, ARB's Deputy Ombudsman, to Leo Kay regarding contact from Anthony Fucaloro
- Exhibit #30 E-mails between Chris Reed of the San Diego's Union Tribune and ARB's Director of Communication regarding an update of the investigation into Tran's Ph.D. (February)
- Exhibit #31 Blog titled "Deceptive Scientist Still Has Job at Air Board, Which Still Stonewalls on the Scandal", dated February 12, 2009
- Exhibit #32 E-mails between the Chris Reed of the San Diego's Union Tribune and ARB's Director of Communication regarding an update of the investigation into Tran's Ph.D. (March).
- Exhibit #33 Blog titled "Air Board's Shame", dated March 14, 2009, posted on Bakersfield Californian
- Exhibit #34 Article titled "Dodgy Science Strangles Industry" posted on the Bakersfield Californian blog-site
- Exhibit #34a Summary of communication between the Director of Communication and Lois Hart of the Bakersfield Californian
- Exhibit #35 E-mail from Mr. Tran expressing his regret and tendency to step down
- Exhibit # 36 Letter of Conditional Resignation
- Exhibit #37 Letter from HR Chief in response to Mr. Tran's Letter of Conditional Resignation
- Exhibit #38 Investigation of Hien Tran conducted by Bart Croes for James Goldstene

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cc: State Personnel Board
Official Personnel File
Vicki Vandergriff, Deputy Director, Administrative Services Division, DTSC
Linda Smith, Chief, Health & Exposure Assessment Branch, ARB
Deborah Kerns, Staff Counsel, Legal Office, ARB