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The Bakersfield Californian March 10, 2013

Saturday, Mar 09 2013 07:00 PM

LOIS HENRY: Cozy emails undermine air czar's integrity

By Lois Henry

When you set yourself up as an independent reviewer of facts, a judge essentially, it's best not to cozy up to one side of a debate coming before you.

In fact, that might be considered unethical, even illegal, in some instances. Certainly, it's a breach of propriety, or even just flat embarrassing.

But not, apparently, to John Froines, a little-known but key figure in the world of air contaminant regulation in Californian.

A string of emails from 2009 into 2010 show he had very friendly ongoing relations with anti-pesticide activists when he was under contract to head an independent scientific committee looking at methyl iodide, a controversial soil fumigant up for registration by the Department of Pesticide Regulation (DPR).

The methyl iodide controversy is long since over and you might wonder why I care. I actually don't care about methyl iodide. Its maker, Arysta LifeSciences, pulled it from the market in 2012, so it's a non-issue.

But I do care about, and take issue with, Froines as he is still the chair of the Scientific Review Panel deciding which substances are toxic air contaminants that need regulation.

Meaning, he's still a supposedly independent reviewer of fact.

The 2009/2010 emails, however, show he's anything but independent.

One email in particular sums it up.

In July 2009, Froines' assistant writes to an activist that Froines supports lobbying then-Gov. Arnold Schwarzenegger against OKing methyl iodide for use.

"But that we have to remain behind the scenes at the moment. John has to protect his position as chair of the review committee for the time being," Froines' assistant wrote.

That was two months before Froines' committee had its first hearing.

I've written about Froines before and said he operates from a personal agenda, not science.

These emails put that in concrete for me.

This may all seem like insider baseball. But it's important because the regulations spawned under Froines' stamp of approval affect all of us on a daily basis.

Such as not being able to light a fire on a cold winter night and having to pay more for produce brought by trucks that have had to undergo expensive retrofitting to reduce the amount of particulate matter in their exhaust.

These are just a few outcomes of Froines' work.

Once his panel decrees a substance as a "toxic air contaminant," that gives the California Air Resources Board (CARB) free rein to come up with regulations to reduce that contaminant to extinction or thereabouts.

Froines has immense power, which is why I like to keep tabs on his doings.

The emails I detail below came to me from an anonymous tip. They were first requested from UCLA, where Froines was a toxicology professor before retiring in 2010, by Arysta. I piggybacked on Arysta's request and received them separately. Neither Arysta nor its attorney returned calls for this story.

Arysta only asked for communications between Froines and activist groups, not between Froines and pesticide industry folks. I have asked UCLA for any industry/Froines emails but haven't yet received a response.

Back in 2009/2010, as I said, Froines was named in a contract between the Department of Pesticide Regulation and the University of California to head a special scientific review committee to look over a risk assessment of methyl iodide produced by DPR.

That was in mid-March 2009. The review committee would not hold its first hearing until late September 2009.

In early April 2009, Susan Kegley, a consulting scientist for Pesticide Action Network, sent Froines emails asking him to review and comment on a letter to the federal Environmental Protection Agency by Bob Bergman, a UC Berkeley chemistry professor, protesting the EPA's registration of methyl iodide.

"Bob and I would appreciate your read on the tone and content of this letter to see if you see anything else in there," she writes.

Then on April 29, 2009, she writes to Froines again, attaching DPR's methyl iodide risk assessment -- the very document Froines is contracted to look over as an impartial scientist.

"MeI (methyl iodide) exposures exceed levels of concern for many different scenarios, particularly for bystanders," Kegley writes and includes a summary by another person who adds that he doesn't see how DPR can approve methyl iodide.

Remember, Froines hasn't even scheduled the issue for a hearing. Hearings by Froines' panel were being touted at the time as truly transparent so the public could trust there was no undue influence.

The emails continue through July with Kegley alerting Froines to a possible lawsuit by one or more environmental groups, political infighting in the governor's office, the then-secretary of Cal/EPA Linda Adams' feelings about whether the governor would allow methyl iodide to be registered.

In one email dated July 3, 2009, to Froines, Froines' assistant Elinor Fanning, Kegley gives an update from Anne Katten with California Rural Legal Assistance. Katten states a DPR scientist and another scientist believe the governor is "bowing to industry pressure" and methyl iodide registration may be through.

Kegley's comment to Froines and Fanning about this update is: "PROBLEMS!!! We are working on this here, but wanted to give you a heads up. Whatever you can do from that end would be welcome."

A few days later is when Fanning sends the email to Kegley saying Froines supports efforts to lobby the governor against methyl iodide but has to remain behind the scenes.

DPR OK'd methyl iodide for use in December 2010 and was promptly sued by EarthJustice. In February 2010, Froines' review was released to the public.

It recommended vehemently against the registration and Froines was famously quoted as saying methyl iodide was "one of the most toxic chemicals on earth."

He told the Monterey County Weekly two years later he was proud that his panel focused on science and didn't allow politics to interfere.

"You can't have science without integrity," he said in the March 29, 2012, article.

He didn't mention the many email and private phone conversations (alluded to in the emails) he had with activists during that time.

Interestingly, there are very few "sent" emails from Froines himself during the run up to his panel's report. And the UC produced no emails at all for the months between Sept. 25, 2009, the date of Froines' first hearing on methyl iodide, and Feb. 8, 2010, a few days before his report was

released. (See side bar).

Froines didn't return repeated phone calls nor respond to an email in which I sent him all the records I had received from UCLA. And Fanning, no longer with UCLA, didn't respond to a Facebook message.

Kegley did speak with me briefly and initially tried to characterize the emails simply as "chemist to chemist" chats.

I explained that's not what the records I had reflected.

She paused and said, "Well, John didn't respond to those emails," which was a very interesting thing to say.

I would have loved to discuss that with her further, but after that short conversation, she never called me back, nor responded to my email in which I sent her all the documents I had.

Likewise, the UC president's office wouldn't comment.

And DPR Chief Deputy Director Christopher Reardon, who is mentioned in the 2009 emails, would only give me an email statement saying: "Any activity that would undermine or corrupt the integrity of the peer review process would be of concern to the Department."

OK, well do these emails show relationships and access that undermine or corrupt the review panel's integrity?

No one I contacted would say.

Well, I'll say: Yes.

The integrity of the panel is absolutely undermined when one side has that kind of access.

Just like DPR's integrity was undermined when internal memos were discovered during the methyl iodide lawsuit that activists said showed Arysta may have had undue influence on DPR scientists.

The memos were splashed far and wide as "smoking guns" in which risks to human safety were downplayed at Arysta's nudging. Some scientists even quit DPR over it.

The public good is never served when the playing field is tilted.

That goes for both sides.

As for Froines, he should take his own advice about science and integrity,

Related Info

UC hits new low in withholding public records

Two letters from the University of California, Los Angeles legal team to an Arysta LifeSciences' attorney explaining why the university felt it didn't have to release more emails from UCLA professor John Froines almost left me speechless.

I've seen a lot of tortured legal reasoning for withholding public information, but this was a truly brazen disregard for the law.

Arysta made its initial request for Froines' emails starting in July 2010.

The company, via its attorney Robert Schuda, then went back and forth with UCLA arguing that none of Froines' "sent emails" were released and there was a four-month gap, from September 2009 to February 2010, where no communications at all were released.

Schuda first complains about the lapses in July 2011 and receives a letter back from Kevin Reed, vice chancellor of legal affairs at UCLA, on Aug. 4, 2011.

Reed says he personally asked Froines for his sent emails and, whaddaya know, Froines said he didn't have them. And, Reed says, the university doesn't have a duty to search "back up systems" because those systems are only for disaster recovery so anything on them isn't a public record.

Well, that makes zero sense. It was a public record, then it wasn't because it went to a back up system? Sheesh.

Schuda complains again to UCLA in a letter dated Aug. 15, 2011, and receives a reply dated Feb. 10, 2012. (Yeah, our tax dollars hard at work there, huh?)

Among the reasons the sought-after emails are being withheld, Senior Campus Counsel L. Amy Blum, Esq. writes, is that "email communications that are wholly personal in nature...do not relate to conduct of university business and, thus, are not 'public records.'"

'Scuse me? Uh. No. The email system used by the UC is paid for by the taxpayers and subject to the California Public Records Act, silly UC policy or not.

And by the way, Froines' email, just like every other professor and administrator, is listed in public directories for public use. There's no question that it's a public email system.

Oh, but Blum goes on.

She invokes "academic freedom" and the need for profs to yap it up on email free from prying eyes and that such confidential musings are essential to the university's mission.

She even claims the First Amendment protects emails from disclosure and that keeping them under wraps is a greater service to the public than revealing their contents.

Seriously, if I hadn't looked her up on the California Bar Association's website, I wouldn't have believed Blum was a real lawyer.

Even the government codes she cites as upholding her position were wrong, noted Jim Ewert, counsel for the California Newspaper Publishers Association.

"This is the first time I've ever seen a public university cite the First Amendment to allow it to withhold otherwise disclosable documents," he said, adding that the policies and practices asserted by Blum violate the state constitution and statutory law on a number of levels.

Here's hoping UCLA does a little better on its next public records act request.

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Listen Up!

Lois Henry hosts "Californian Radio" every Wednesday on KERN 1180 AM from 9 to 10 a.m. You can get your two cents in by calling 842-KERN.

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<http://www.bakersfieldcalifornian.com/health/x411128567/LOIS-HENRY-Nice-to-see-some-pols-applying-pressure-to-UCLA>

The Bakersfield Californian April 13, 2013

Saturday, Apr 13 2013 10:30 PM

LOIS HENRY: Nice to see some pols applying pressure to UCLA

BY LOIS HENRY Californian columnist lhenry@bakersfield.com

Just when I think my "pointless scribbles" (as one of my "fans" recently said of my columns) really are that, something pops up that gives me heart.

Two state senators have taken on my quest to get answers out of UCLA about whether a professor acted unethically -- or worse -- by having cozy email confabs with activists opposed to a controversial soil fumigant when the professor was supposed to be an independent reviewer.

I'm talking about John Froines. And after reading the emails, I say his conduct looks pretty shady.

For their part, UCLA officials kept mum when I asked about Froines' emails last month. The Department of Pesticide Regulation, which hired Froines as the independent evaluator, basically followed suit.

UCLA's recalcitrance went further, though, as the school refused to produce all of Froines' emails regarding the fumigant, methyl iodide, when asked several times by an attorney and later by me.

Sen. Jean Fuller took note of my column and she and Republican caucus leader Bob Huff decided to see if they could do any better.

They sent a letter with a host of questions to UCLA.

I wish them the best of luck.

Either way, it's a great letter and this is my favorite part:

"UCLA's rationale for not providing these emails appears as if it may be in violation of government codes and statutes as pointed out by Jim Ewert, counsel for the California Newspaper Association, who told the Californian, 'This is the first time I have ever seen a public university cite the First Amendment to allow it to withhold otherwise disclosable documents.'

"Frankly, on its surface, UCLA's refusal to provide this information raises serious questions and suspicions about what is being withheld from the public and why."

Couldn't have said it better myself.

The letter, sent April 2 to UC Chancellor Gene Block, doesn't give UCLA a deadline to respond and Fuller said she and Sen. Huff haven't laid out all their next steps.

"The main thing was, we felt the school should be forthcoming and we didn't feel that they were," she said. "They need to answer your questions. If not you, then me. If not me, then as many people from the Senate as we can get to sign on to the letter."

Her general idea is to "incrementally raise the stakes with them. I expect it will get embarrassing after a point."

I contacted UCLA Friday afternoon to see what response, if any, officials had to the senators' letter. But I wasn't able to reach anyone before close of business.

To refresh your memory, last month, I wrote about how Froines chaired a supposedly independent panel in 2009 to evaluate the risks of methyl iodide. The fumigant is mostly used with strawberries and is intended to replace methyl bromide, which is harmful to the ozone layer.

For months before Froines held the panel's first hearing, he was in close email contact with activists opposed to methyl iodide.

Activists included Susan Kegley, a consulting scientist for Pesticide Action Network, who kept Froines abreast of political machinations in the governor's office, plans for a lawsuit and more.

At one point, in July 2009, Froines' assistant, Elinor Fanning, wrote to Kegley that Froines supported lobbying then-Gov. Arnold Schwarzenegger against methyl iodide.

"But ... we have to remain behind the scenes at the moment. John has to protect his position as chair of the review committee for the time being."

Uh huh.

Methyl iodide was approved by the Department of Pesticide Regulation in Dec. 2010. EarthJustice, an activist environmental group, quickly sued

Then Froines' panel came out with its evaluation of methyl iodide in February 2010, calling it "one of the most toxic chemicals on earth."

It may all seem moot at this point as methyl iodide's maker, Arysta LifeSciences pulled the chemical from the market in 2012.

But I think Froines, UCLA and the Department of Pesticide Regulation still have some explaining to do.

Not just because of Froines' 2009 email antics. But because he's still serving as chair of the Scientific Review Panel, which decrees which substances are toxic air contaminants.

That gives him a lot of power to decide what the California Air Resources Board can regulate.

And that has a direct impact on all our lives, from not being able to light fires on cold nights to paying more for goods transported by truck.

As chair of that committee, Froines is supposed to be an unbiased arbiter of facts, a judge of science only.

Those emails, however, show Froines is anything but unbiased.

I asked the UC's president's office whether the emails show a conflict. No response.

I asked the same of the Department of Pesticide Regulation and got: "Any activity that would undermine or corrupt the integrity of the peer review process would be of concern to the Department," from Chief Deputy Director Christopher Reardon.

Well, was the integrity of the process corrupted?

No one would answer me.

Maybe someone will answer Senators Fuller and Huff.

And by the way, I also asked UCLA for any emails between Froines and pesticide industry folks during the time he was supposed to be evaluating methyl iodide.

I got a letter earlier this month stating the school could find no such records.

Color me shocked.

Froines emails

Read key information in the PDF labeled "Froines emails." Here's a guide to help you:

Page 3

April 7, 2009

Susan Kegley, director of PANNA, asks John Froines to comment on a letter Bob Bergman is sending to EPA asking EPA to reconsider its registration of MeI.

Page 10

April 29, 2009

Kegley provides Froines et al with a summary done of the DPR risk assessment.

Page 298

July 3, 2009

Inside information provided by Kegley to Froines re: governor's thinking on the scientific review committee contract.

Pages 307, 310, 314, 315, 317

July 9-July 16

Updates from Kegley to Froines et al on press efforts, a possible lawsuit by PANNA and conversations with DPR officials, including a request from Fanning to Kegley asking for an update. Fanning states that Froines had talked with Bergman and wants him to know they support him in any way possible going to the governor, but that they have to remain behind the scenes at the moment. "John has to protect his position as chair of the review committee for the time being."

Pages 333, 336

Aug 4-17

Update from Kegley to Froines et al re: a hearing by Monning including questions expected to be asked of Froines. And a note promising to call later to discuss.

Page 572

Feb. 8, 2010

Gina Solomon, then with Natural Resources Defense Council, now Deputy Secretary for Health and Science with Cal EPA, thanks Froines for the call the previous week and asks for updates.

Page 573

Feb. 11, 2010

Solomon thanks Froines for his "quick footwork."

Pages 588, 589, 591, 593

March 3 and 4, 2010

Solomon discussing testimony from Froines and Paul Blanc at an upcoming hearing.

Related PDFs

- [Questions from senators](#)
- [Froines Emails](#)

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<http://www.bakersfieldcalifornian.com/columnists/lois-henry/x1496674317/LOIS-HENRY-UCLA-prof-wants-more-time-with-his-family-I-dont-buy-it>

The Bakersfield Californian July 10, 2013

Tuesday, Jul 09 2013 05:59 PM

[LOIS HENRY: UCLA prof. wants more time with his family? I don't buy it](#)

By Lois Henry

A UCLA professor resigned Monday from a key state environmental panel. Why should you care?

Well, many of the air regulations we deal with every day that increase our [cost of living](#) and keep us cold on winter nights, can be traced directly back to that panel and the work of this particular professor, John Froines.

But more than that, this is a tale of how Froines has unethically, I believe, used his position to bend society to his views, while hiding behind the facade of an unbiased scientist.

It's also a story of how he's been protected in his efforts by the publicly funded University of California system, which apparently doesn't understand that it does, in fact, serve the public and is bound by our laws. I'll come back to that in a bit.

I've been harping on Froines and his involvement with the Scientific Review Panel for several years now.

The panel is made up of nine people, mostly scientists, and is tasked with reviewing studies to determine whether a substance, such as [diesel exhaust](#) or a particular pesticide, is a threat to human health.

Once the panel puts its "threat!" stamp on something, state agencies start cranking out regulations.

It's an obscure, but vitally important panel.

Froines has been on the panel for nearly 30 years, serving as its chair for much of that time.

Turns out he was serving illegally for a lot of those years, as the state hadn't bothered to follow its own reappointment procedures. So, he and several others were kicked off in the summer of 2010.

Before the new panel's first meeting that fall, however, Froines was baaaaaack.

He'd gone to a lot of political wrangling -- even personally pressuring his replacement to step down -- to get back on the panel and into the chairman's seat.

Last spring, he was reappointed to another three-year term.

Which makes his Monday resignation somewhat curious.

He literally clawed his way back onto the panel. Then he just bails midterm because, in his words, "I want to spend time with my family and travel" and do research?

I don't buy it.

I'm wondering if maybe Froines made himself a political hot potato after it was revealed he was having ongoing cozy relations with anti-pesticide activists while acting as an supposedly impartial judge of the safety of methyl iodide, a soil fumigant.

Froines had been hired in 2009 by the state Department of Pesticide Regulation to gather a group of scientists who would look over all the department's risk assessment on methyl iodide and determine whether it was safe to use under the department's proposed guidelines.

Months before he'd even convened his first meeting on the issue, however, he was entertaining emails from a few key anti-pesticide activists.

The emails asked for his advice with letters to the [Environmental Protection](#) Agency against the very chemical he was supposed to review. They updated him on the activists' political efforts against methyl iodide with then-Gov. Arnold Schwarzenegger. They gave him a heads up on a lawsuit that might be filed if the pesticide were approved. And activists even sent him the Department of Pesticide Regulation's risk assessment, which his panel was supposed to review and discuss in an open hearing months later, with their extensive comments about how bad the chemical was.

Froines, himself, rarely responded. Or, at least only a few responses were included in the packet from UCLA, procured through a public records request.

Froines' assistant did respond, however, at one point telling activists that while Froines agreed with and encouraged their lobbying efforts, he had to "remain behind the scenes at the moment. John has to protect his position as chair of the review committee for the time being."

If that doesn't scream collusion, I don't know what does.

In the end, Froines' committee came out with a scathing report against methyl iodide and he called it "the most toxic chemical on Earth."

Whether methyl iodide is truly that dangerous, isn't the issue here.

The real issue is that Froines is clearly not an impartial scientist.

If you don't believe me, Froines himself has told the world that he believes science should be used to alter society.

"I kept having to figure out whether I was a social activist or I was a scientist. And getting into environmental issues was a way to deal with that schizophrenia," he told KQED, a San Francisco public television station, in 2007.

He's an activist.

But lets come back to why I say the UC acted improperly in all this mess.

UCLA never coughed up all of the Froines-activist emails that were requested.

Very few of Froines' "sent" emails were included in what the school did provide, and there's a months-long gap in the email string from Sept. 2009 to Feb. 2010.

When challenged on those issues, UC's Chancellor of Legal Affairs Kevin Reed, and UCLA campus attorney L. Amy Blum used myriad lame excuses for UCLA's refusal to give up the records.

First, Reed said, he personally had asked Froines for his sent emails. Big surprise -- Froines claimed not to have any. Reed added that UCLA doesn't have a duty to search its backup system for the emails because that's only for disaster recovery, so anything on them wouldn't be public record.

Oh brother. If it was public at some point, it's public even on a backup system.

Blum chimed in, saying emails that don't relate to university business are not subject to public disclosure.

Wrong. This is a publicly funded system. All the emails are inherently public (with some limited exceptions such as emails discussing personnel matters.)

Blum then has the audacity to claim the First Amendment protects faculty emails from public disclosure in the interest of academic freedom.

I thought that was rather ludicrous, and so did state Sen. Jean Fuller, R-Bakersfield, who sent a letter with state Sen. Bob Huff, R-Diamond Bar, in April to UCLA demanding better answers.

Reed finally wrote back to them on June 11 and again claimed academic freedom protects the emails.

Even if you were to accept the notion that academic freedom should shield some "scholarly communications," (which I do not) it doesn't hold water in this case.

Froines was under contract by a separate state agency to conduct a public review of a pesticide that had huge public interest.

From the emails that were released, it's clear the communications were political in nature, certainly not scholarly give-and-take about his studies into the effects of methyl iodide.

Oh, and Reed admitted in his letter that UCLA did pick and choose which Froines/activists emails to release and which to hold back.

Meaning, there are more emails and possibly more to the story.

Stay tuned.

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