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# Lois Henry: Hype clouds our real air pollution picture



BY LOIS HENRY, Californian staff writer  
[lhenry@bakersfield.com](mailto:lhenry@bakersfield.com) | [Saturday, Jan 17 2009 5:07 PM](#)

[Last Updated: Saturday, Jan 17 2009 7:35 PM](#)

[I have no idea how to say this, so I'm just going to say it.](#)

Claims about air pollution's devastating effects on public health are, um, hoey. Or at least largely hoey.

You have no idea how it pains me to say that having many times, and publicly so, taken officials and politicians to task for not doing more to clean our "filthy air."

Ewww, this crow tastes nothing like chicken!

Please don't take this to mean we shouldn't continue to try and make our air as clean as possible. We should.

But it should be done using a reasoned approach based on solid scientific evidence without the wild claims and near hysteria some environmental groups have beaten us over the heads with to keep us in fear of our next breath without more and more and MORE regulation.

Here's what I've concluded after reading a number of studies, talking to scientists and physicians and looking at some common sense trend data:

A) Our air is cleaner than it's been in 30 years. And our air pollution isn't nearly as bad as we've been led to believe.

B) The pollution we do have is not killing us.

Just recently (November) we were told by Cal State Fullerton researchers that bad air costs the San Joaquin Valley \$6 billion a year, most of that due to the "premature" deaths of more than 800 people allegedly cut down by crummy air.

There was some discussion in news stories, including this paper, about how researchers arrived at that figure. Turns out it's not an actual cost, as if those 800 people were pumping billions of dollars

into the economy when they were suddenly felled by a whiff of ozone. It's a statistical value the researchers placed on human life, and, in my mind, it's misleading at best.

Other than that, the media reported that more than 800 people actually kicked the bucket last year because of pollution. (Editors in this newsroom were skeptical about that assertion and our story did quote a researcher who said the number of deaths was inflated, but we could have dug deeper.)

Money aside, I think the real question on whether air pollution is killing people in droves ought to be, really?

I'm convinced the answer is a resounding NOT REALLY.

A 2003 study by James Enstrom, a 35-year lifestyle epidemiologist at University of California, Los Angeles, found California did not have a death rate out of whack with our population. That means we don't have a lot of premature deaths at all, much less from air pollution.

In fact, California has the fourth lowest total age-adjusted death rate in the country, according to Enstrom.

"The irony is, people are living longer in this state than ever before," he said.

A Johns-Hopkins study using Medicare data released last month, backs up Enstrom's death rate findings specifically for exposure to PM2.5 (very small particulate matter, such as soot, which is what's keeping us from being able to use our fireplaces, by the by), at least in the west from Washington state to Southern California.

"For the 32 western U.S. locations, there is little evidence of an association between chronic PM2.5 and mortality," the study states.

Enstrom is one of a handful of scientists and researchers fed up with groups using small inconclusive studies to draw extreme conclusions that are then used to create stringent regulations.

"The claims have just gotten out of sight," Enstrom told me. "Unfortunately, this has become an agenda for a lot of organizations that used to be more interested in research on diseases and now want to be advocates for ways to deal with them and they aren't focused on real research anymore."

I know the enviros out there are madly Googling Enstrom for any hint of association with "evil industry." So to save you some time, he did one study funded by the Electric Power Research Institute and beyond that has no ties to corporations that might benefit from him saying we've been bamboozled on air pollution.

I also spoke with Joel Schwartz, a Sacramento-based environmental consultant who used to work for the conservatively bent Reason Foundation but who started out working for an environmental group in Los Angeles and didn't like the kind of "science" he saw being perpetrated on the public.

Most of the studies being used by regulators are epidemiological or meta-analysis, Schwartz said.

The first looks at groups of people and ties them together by common factors, such as people who had heart attacks and whether they were exposed to high levels of PM2.5 in a certain time frame before the attack.

The second type of study, meta-analysis, aggregates the results of a bunch of other previous studies that looked at similar hypotheses. I'd never heard of such a thing and, frankly, it kinda sounds like cheating to me.

“Activists and regulators are in the business of finding dragons to slay,” Schwartz said. “The air is so much cleaner now but they keep tightening the standards and finding ways to make false claims that lower and lower pollution levels are more and more harmful.

“They stay in business as long as the public has the perception that there’s a problem to solve.”

Take asthma, he said.

We’ve been told for years that pollution and asthma go hand in hand. If that’s true how can it also be true that asthma rates continue to climb — even on the central coast, which has virtually no air quality problems — while our pollution continues to drop?

I had no answer for that, other than, “DOH!”

Some months ago, I was hot after a story tip about elderly people who’d lived here all their lives and never smoked reportedly coming up with terrible lung diseases, of course, because of our air.

I spoke with Dr. Augustine Munoz, a pulmonary specialist at Kern Medical Center, and was deflated when he told me, essentially, nah, ain’t happening. Air pollution, he said, doesn’t hurt healthy lungs.

“The most rapidly growing lung problem we have in Kern County is sleep apnea due to obesity,” he said.

His answers didn’t fit my theory. I tucked the interview away and only revisited it when I started wondering about those 800 alleged air pollution deaths. Go figure!

When I asked San Joaquin Air Pollution Control District Executive Director Seyed Sadredin about what I’d learned, he wasn’t surprised.

He said the Federal Environmental Protection Agency sets the standards for how much of each pollutant can be in the air at a healthy concentration based on “what we have to assume is proper scientific study.”

Even as we’ve reduced pollution in the valley by 80 percent from industrial sources and 60 percent overall since 1980 (despite a massive population increase) the feds have continued to ratchet down

our pollution standards, claiming new science shows even smaller concentrations are unhealthful, particularly for sensitive groups such as the elderly, children and people with respiratory problems.

Even with all that, it's not enough for some environmental groups.

Earth Justice recently sued because the feds found the valley in compliance on the old standard for PM10 (airborne particles, like PM2.5, only bigger) as we hadn't exceeded that old standard in five years.

There's a new standard being adopted, but Earth Justice sued over the old one.

Clearly, this is not about Earth Justice fighting for our health. If the valley is found in "attainment" it takes away their legal hammer to demand even greater regulation based on what appears to be dubious science, and collect legal fees, of course.

The real danger is that people won't put up with being lied to, at least not for long, and a serious backlash could undo the decades of good work that have given us cleaner air.

"If you don't objectively and honestly portray the problem, you do lose credibility," Sadredin acknowledged.

Ya think?

Opinions expressed in this column are those of Lois Henry, not The Bakersfield Californian. Her column appears Wednesdays and Sundays. Comment at <http://people.bakersfield.com/home/Blog/noholdsbarred>, call her at 395-7373 or e-mail [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com)

<http://www.bakersfield.com/1020/story/716452.html>

## Lois Henry: Dodgy science strangles industry



BY LOIS HENRY, Californian staff writer  
[lhenry@bakersfield.com](mailto:lhenry@bakersfield.com) | Saturday, Mar 14 2009 2:58 PM

[Last Updated: Saturday, Mar 14 2009 4:04 PM](#)

[We are about to cripple California's trucking and construction industries for absolutely no good reason.](#)

If I really believed the California Air Resources Board's draconian new diesel emissions standards would save thousands of lives a year, I might say, sorry guys, you gotta suck it up for the greater good.

But when you scratch the surface of the alleged science used by CARB to justify these rules, there's just no "there" there. Our air is NOT killing us, despite what the "environmental alarmist complex" would have us believe.

And, oh yeah, CARB's lead researcher, Hien T. Tran, who wrote the report on which the diesel rules are based lied about having a Ph.D. in statistics from University of California, Davis, according to a CARB spokesman.

That's right, he made it up to get a CARB management job for which a Ph.D. isn't even required. No Ph.D. requirement seems more than a bit loose to me, but that's another story.

The CARB spokesman said they're standing by that report, as well as their diesel rules, which were to go into effect in 2011 but likely will be delayed two years under a state budget deal as a nod to the crumbling economy.

Some people are calling for the rules to be eased while we get through this econ-aggeden, but I say that's a Band-aid on an axe wound.

The rules need to be scrapped. We need a redo, this time using a group of bonafide scientists who don't have to lie about their credentials.

The object of the new standards, by the way, is to reduce PM2.5 (tiny bits of soot) from diesel emissions, which CARB adamantly believes kills thousands of Californians every year, despite studies to the contrary.

The agency has mandated that all diesel trucks and heavy equipment be retrofitted with devices to reduce PM2.5 emissions by 80 percent by 2020 compared to what they were in 2000.

The report on which the rules were concocted is valid, insists a CARB spokesman, because it underwent "peer review" by other scientists.

Yes, but only the draft version. Not the final one with comments from the public, including a number of scientists who disputed its conclusions and the fact that it discounted studies showing little to no increased death rate in California from PM2.5. (Even a map from one of the studies

CARB did value, showed little to no PM2.5 deaths in California, but that was also ignored in the report.)

As for the studies that were used in the report, they were weighted by a group of 12 scientists, nearly half of whom wrote or helped author the very studies being graded. And at least a few of those graders are being paid by CARB for more studies.

When I asked Bart Croes, chief of CARB's research division, and Linda Smith, chief of CARB's health and exposure assessment branch, how that's not a screaming conflict of interest, they passed the buck and said the scientists were picked by the EPA.

In my business, that's what we call a "non-denial confirmation."

Digging further into that report, I wondered why it was OK to take results from one air study that found increased death rates from PM2.5 in Los Angeles, mix them with results from studies elsewhere in the U.S., then average those results and apply them to the entire state of California.

I don't have a Ph.D. (real or fake), but that seems pretty slapdash to me.

Smith told me averaging results is perfectly acceptable because of the volume of studies from all over the world that show PM2.5 is dangerous to health and "PM is PM" — just as hazardous one place as another.

Not quite, according to Robert F. Phalen, Ph.D. (a REAL one!), with the Air Pollution Health Effects Laboratory at UC Irvine and author of the book "The Particulate Air Pollution Controversy: A Case Study and Lessons Learned."

CARB simply measures how many micrograms of PM are in a cubic meter of air, he writes, not by size or even chemical composition.

"The use of this crude mass indicator is not only scientifically shaky, but it can also be hazardous to public health," Phalen writes.

For example, filters that lower particles in emissions by breaking down them into smaller bits could actually increase adverse health effects, Phalen says. And without knowing the chemical makeup of the particles that are actually causing health problems, you could be eliminating harmless material while ignoring real culprits.

"The available science is not sufficient to define the key indicators that determine the health effects of PM," he concludes.

Even if you believed PM2.5 was knocking off your neighbors in droves, CARB's own estimates show we'll be very close to the 2023 emissions reduction goal without any extra regulation at all as old diesel equipment is retired. In fact, we'll be within four or five tons per day of the goal without any added regulation at all.

I mentioned that to CARB's Smith and she sharply reminded me that that four tons could represent five to 10 deaths per year, depending on where you looked in Los Angeles.

Which brings me back to the "science" CARB used to come up with its diesel rules.

They relied on a number of epidemiological studies, large sets of observational data (not experiments) queried by scientists to tease out patterns.

The problem with those kinds of studies, according to Stanley Young, Asst. Director for Bioinformatics at the National Institute of Statistical Sciences in North Carolina and who has a real Ph.D. in statistics and genetics, is they can't control for every factor and often end up with biased conclusions.

"Say you're looking at a situation where the temperature goes up, ozone goes up, PM2.5 goes up and humidity goes up. Which of those factors, if any, is killing people?" Young said. "It's a matter of political judgment if you put your finger on ozone."

When other scientists try to replicate results from observational studies, the conclusions don't hold up 80 to 90 percent of the time.

"If you do exactly what the original researchers did, yes, you get the same results," Young said. "When you look at the way they did their analysis, that's where things get dodgy.

"There is a lot of freedom to move the answer around."

It was Young who blew the whistle on Tran for not having a Ph.D. after he read Tran's report. He couldn't believe how amateurish and poorly done it was.

"Frankly, I was shocked," he said. "I asked if they had looked at the raw data from key papers and done their own analysis. They did not have the data and the answer was no.

"It's a crazy situation. And I've just been looking this from the outside."

The view isn't much better from the inside.

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<http://www.bakersfield.com/1435/story/725594.html>

## FORUM: California can't wait on diesel regs

The Bakersfield Californian | Tuesday, Mar 24 2009 9:59 PM

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Lois Henry gets it wrong in her March 14 column, "Dodgy science strangles industry," which she uses to criticize the California Air Resources Board's new regulations aimed at reducing emissions from aging, dirty big-rigs and off-road construction equipment.

The State Bus and Truck Regulation, adopted in December after exhaustive research and peer review, and which Ms. Henry would like to "redo," will prevent 9,400 deaths between 2011 and 2025; greatly reduce days of missed work, school and hospitalization; and lower health care costs by billions of dollars. Asthma symptoms, cancer, heart and lung disease will all be affected for the better, once emissions from these one million vehicles are successfully controlled.

The same can be said for CARB's Off Road Regulation, adopted in 2007, which will slash toxic and cancer-causing diesel emissions from the state's estimated 180,000 "off-road" vehicles used in construction, mining, airport ground support and other industries. Over its lifetime, the rule will prevent at least 4,000 premature deaths statewide and avoid \$18 billion to \$26 billion in premature death and health costs.

It is very important to CARB that we scrutinize economic as well as health impacts during the rule development process. As part of that, we meet with the hundreds of business owners and stakeholders impacted, so for almost two years, we went up and down California. As a result, the Truck and Bus regulation was revised more than once to accommodate concerns voiced by the trucking industry.

With regard to the harm that stems from exposure to PM 2.5, there have been several studies produced within just the past few years that support CARB's need to regulate emissions from the nearly 1 million trucks and buses driving California's highways. These include a 2008 report by Cal State Fullerton researchers that found dealing with the health impacts of air pollution, especially diesel emissions, costs the state \$28 billion annually.

If the myriad studies attesting to the harm posed by "tiny bits of soot" are not enough evidence, I encourage you to visit the websites of the American Lung Association, American Cancer Society, American Heart Association, American Academy of Pediatrics, Union of Concerned Scientists and countless other respected organizations for further proof that CARB's steps are critical to saving lives. The weight of scientific evidence clearly supports an increased risk of dying before your time if you are exposed to elevated PM 2.5 levels.

Ms. Henry's whole premise for questioning the science behind the diesel regulations is a red herring. Though we do not take lightly the false claim of a PhD in Statistics from UC Davis by one of the writers of the PM 2.5 health report, Ms. Henry greatly overplayed the significance of this misstatement as it relates to the truck regulation.

The individual in question simply pulled numerous studies together into one document. He did not produce one single piece of new health evidence. More importantly, the report that he helped compile went through four levels of independent, external peer review. Three nationally recognized scientific advisors from Harvard, Brigham Young University and the State's Office of

Environmental Health Hazard Assessment assessed all aspects of the work, including all publicly released versions of the report. The UC Berkeley Institute of the Environment selected six formal peer reviewers for the report. We also convened a panel with the U.S. Environmental Protection Agency, the World Health Organization and internationally recognized PM health effects experts. And at the request of the Engine Manufacturers Association, the diesel soot exposure estimates were reviewed by Philip Hopke of Clarkson University. The result? All levels of review agreed with the basic conclusions of the report.

What CARB knows after more than 40 years in business is that diesel exhaust is an insidious and pervasive enemy, responsible for 70 percent of the known cancer risk that comes from air pollution. It can and does kill. To delay enactment of either the Off-Road Heavy Duty Diesel or Statewide Truck and Bus regulation would waste precious time and only cause further pain and suffering to those whose health has already been compromised by diesel air pollution.

*Mary D. Nichols is chairwoman of the California Air Resources Board. The Californian reserves the right to reprint Another View commentaries in all formats, including on its web page.*

<http://people.bakersfield.com/home/Blog/noholdsbarred/42886#comments>

Lois Henry Blog (March 25, 2009):

**No holds barred -> The head of CARB has some choice words for me!**

Mary Nichols, the head of the California Air Resources Board took me to task in a letter we published today (3/25) in our Editorial Section.

While I appreciate that she took the time to write (though put me off on underlings when I called for an interview..) I stand by my stories and note that her letter relies, again, on epidemiological studies which have not had their results independently verified and replicated.

Also, I disagree that it's not a big deal that their researcher, Hien Tran, lied about having a PhD from UC Davis in statistics because all he did was compile information from the studies.

First, he did a bit more than just throw together other people's work. He interpreted it, averaged findings and picked numbers, sometimes at random, to determine the safety of PM2.5 levels.

And that report, not the studies, was what CARB board members used to create the diesel emissions rules that will kill California's trucking and heavy equipment industries.

So, nice try and thanks for playing, but no cigar!

[http://www.bakersfield.com/contact\\_us/newsroom/management/story/36458.html](http://www.bakersfield.com/contact_us/newsroom/management/story/36458.html)

## **Lois Henry, Assistant Managing Editor/Projects**

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Lois Henry is Assistant Managing Editor/Projects, supervising the investigative reporter and the paper's columnists, and directing Sunday's front-page coverage.

Employed at The Californian from 1990 to, well, so far until today. Frankly, the less you know about this person the better. Bitter is the best word to describe Lois Henry. And, really, who can blame her. Reared and educated (a relative term at best) in the dusty ag town of Fresno, she obviously didn't make much headway before landing in yet another dusty ag town - Bakersfield.

Sure, she covered plenty of beats, city, county, state government, social services and finally oil. But then in 1997 she chained herself to a desk becoming Metro Editor, then assistant managing editor in 1999. These days, she can be found slogging through copy muttering about too many dashes, harassing hapless reporters about the need for a "who cares?" paragraph in their stories and barking orders at no one in particular. And please don't get her started about water coverage.

Mostly, we just leave her alone and hope for the best. Hobbies: Writing joke bios Morbid fears: Clowns

<http://www.bakersfield.com/news/columnist/henry/x1008890016/LOIS-HENRY-Air-board-and-facts-have-iffy-relationship>

## **The Bakersfield Californian | Sunday, May 30 2010**

### **LOIS HENRY: Air board and facts have iffy relationship**

Last Updated Saturday, May 29 2010 01:00 PM

If you discovered that the facts upon which you based a certain action were no longer true, you'd probably change your actions to fit the facts.

For example, if you lost your job, you probably wouldn't buy a new car since your income had dropped.

At least that's the logic we peons typically operate under.

Not the California Air Resources Board.

Facts don't fit? No prob -- they just ignore, obfuscate or, when all else fails, change the rules.

That appears to be the case regarding preliminary results of a study commissioned by CARB to look at the health effects on Californians of PM2.5 (tiny particulate matter from exhaust, smoke and dust). These were presented at a symposium held February 26.

The results show a big, fat zero.

As in, there is no evidence of "excess mortality associated with PM2.5" for deaths from "all causes" in California.

This is important because PM2.5 is the new bugaboo in the world of air pollution.

The supposed ill effects of PM2.5 on public health are the foundation for a host of existing and upcoming regulations, some of which are looming over the trucking and heavy equipment industries like an anvil.

We've been told over and over that the science on PM2.5 is solid, overwhelming and final. I've contended since early last year that's not entirely true.

In fact, if the early results from this latest study hold true, it will join at least four other significant studies that show no elevated risk of premature death due to PM2.5 exposure, particularly in California, where we don't have the levels of sulfates that regions in the eastern United States do.

Side note pitstop: This does not mean I think our air is pristine or that it's just dandy to go suck on a tailpipe. We should work to clean our air as much as possible, of course. But regulations should be based on sound science and done in a way that doesn't entirely wreck our already critical economy.

OK, back to the topic at hand.

John Balmes, a CARB board member, acknowledged that some studies do show that the further west you go, the lower the risk of death from PM2.5. And there has been a data gap on the effects in California.

"Yes, we use different fuels, have cleaner engines and retrofitting, but diesel PM is still diesel PM and I find it hard to believe diesel PM is different here than on the East Coast," Balmes said.

Any California anomalies likely won't matter anyway, he said, as the federal Environmental Protection Agency is moving forward with a stricter standard for PM2.5 that all states will have to meet.

"And we can't clean up the air in California without controlling diesel emissions," he said.

Wait a minute, does that mean it suddenly doesn't matter if this stuff is killing people? Why bother with the study then?

I spoke with Michael Jerrett, the lead scientist on the CARB-funded study, about his results showing no premature deaths in California due to PM2.5 exposure. He cautioned that first, these are preliminary results and second, even if the results hold, you can't use just one study to determine what regulations are needed to protect public health.

Again, he said, the body of evidence supports the contention that PM2.5 is dangerous, particularly in regard to cardiovascular disease-related deaths.

As far as his study, it's the link between PM2.5 and cancer are negative and that is what brings the "all cause" category down to zero.

Still, you can't ignore the possible links between air pollution and the other causes of death, especially cardiovascular, he insisted.

OK, except CARB bases its regulations on "all causes" of death, also called "premature deaths."

They do that because, as Jerrett acknowledged, it's too difficult to say whether a cardiovascular-related death is strictly associated with air pollution.

Even so, CARB may abandon the "all causes" approach, he said.

Ah, yes, if the facts don't fit, change the rules.

To be fair, Jerrett did point out that some small control studies have shown a plausible connection between air pollution and diminished lung function. To be sure, air pollution isn't good for us.

But CARB's typical approach is to take a bunch of epidemiological studies -- routinely discounting those that show no elevated risk of premature death from PM2.5 exposure -- average the results and -- BLAMO -- come up with ludicrous assertions that exposure to PM2.5 can be associated with 18,000 deaths a year in California. That was the number tossed out in their most recent health effects report by Hien Tran, who was discovered to have lied about his academic credentials.

I wondered, given his results so far, if Jerrett felt these studies and how they're being used are a bit alarmist.

"I don't think so," he said. "There are hundreds of studies pointing, for the most part, in the same direction."

Other scientists at that February 26 symposium had very different views.

Frederick Lipfert, a doctor of environmental studies who has published reams of papers, studies and books on human mortality and air pollution, even scolded Jerrett for saying he intended to rework his data to find out why he had a negative result for PM2.5 and cancer deaths.

"When you got a negative result, you said you wanted to find out what was wrong, but you didn't say the same thing for your positive results," he said. "That's something I find inappropriate."

Suresh Moolgavkar, a noted epidemiologist and professor at University of Washington, reminded the other scientists that results are easily biased in these massive epidemiological studies.

"If you start with the assumption that PM is killing people, that is what you will find," he said.

And when the facts don't fit that mold, toss out the mold.

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## **The Bakersfield Californian     August 15, 2010**

# **LOIS HENRY: Independent thought not wanted at UCLA**

By The Bakersfield Californian

Aug 14, 2010

I know you're going to wonder why you should care about some brainiac getting the boot at UCLA. So let me start by explaining why it matters, then we'll get to the nitty gritty of what happened.

It matters because it looks like UCLA is firing this guy because his work on air pollution doesn't fit with popular thinking and it wants to shut him up.

Popular thinking, that air pollution is killing us, is lucrative to universities by way of government-funded research grants.

The guy who's getting sacked, James Enstrom, was one of only a few scientists willing to stick his neck out and blow the whistle on an outright fraud and coverup at the California Air Resources Board (CARB) over regulations that will squeeze every wallet in this state once they're implemented.

Enstrom has been relentless, if not successful, in his efforts to get the air board to acknowledge that the science on the health effects of air pollution is not closed.

Moreover, he has demanded that the process of science-based regulation be honest, open and fair.

And that's why this really matters.

### **Out of step**

Now, despite his 34 years as a researcher at UCLA, he's being dumped by a secret vote of the faculty in the Environmental Health Sciences Department.

Their official reason for not reappointing him is "your research is not aligned with the academic mission of the Department," according to a July 29 letter sent to Enstrom notifying him that his appeal of an earlier dismissal letter had been denied and his last day would be Aug. 30.

Department Chair Richard Jackson told me the faculty had no problem with scientific disagreement.

"They're not troubled by disagreement, but by poor quality science," he said, adding that "there are two sides to every story."

When I asked what about Enstrom's science had been subpar, Jackson said he would prefer I schedule a "formal interview" with him, which I did for the next day. He later canceled and referred me to Sarah Anderson, dean of communications for the School of Public Health.

Anderson e-mailed and asked what my questions were. I sent them and she replied that UCLA does not discuss personnel issues.

I objected that the faculty's opinion of Enstrom's published scientific work isn't a personnel issue.

I got nothing back.

Several other Environmental Sciences faculty members did not return my calls.

Beate Ritz, a leading air pollution scientist with UCLA who works in the Epidemiology Department, did respond.

She said she hadn't read Enstrom's 2005 study on air pollution.

But, based on his 2003 findings that second-hand cigarette smoke doesn't kill people, she said she knows him "for letting his interpretations go beyond the data and his personal biases to be strong enough to not allow for a balanced and appropriately cautious interpretation of the numbers."

Her attitude wasn't surprising to Enstrom, who said his 2003 paper, published in the British Medical Journal, was widely attacked.

"Not a single error was ever identified in that paper and I refuted all claims made against me and my research," he said. "My work isn't about being politically correct, it's about honest research and being faithful to the science."

Noted toxicologist Robert Phalen, who co-directs the Air Pollution Health Effects Laboratory at the University of California, Irvine, said Enstrom's science is very high quality. He theorized it has been Enstrom's outside activities, such as agitating at the air board, that did him in rather than his science.

"Jim was definitely out of step" with the direction of the leaders of his department, Phalen said.

Jackson himself alluded to that, saying the faculty were also troubled by Enstrom's presentation at a symposium in February put on by CARB to discuss the science examining air pollution's health effects. He didn't say exactly what about the presentation was upsetting.

### **Tangling with CARB**

The Environmental Science mission statement says the department is "committed to furthering research and education at the interface between human health and the environment."

Enstrom has done exactly that with his studies, most notably one published in 2005 that shows no evidence of premature deaths in California due to exposure to PM2.5.

PM2.5 is tiny bits of dust and soot that CARB is trying to regulate to a gnat's hind end.

Specifically, CARB has regulations pending that would render today's trucking and heavy construction fleets inoperable in California.

The rationale for the regulations is that, based on numerous studies, PM2.5 kills thousands of Californians each year.

Enstrom's 2005 study was peer-reviewed and published in well-respected journals and, while some have disagreed with his conclusions, the study and its methodology have held up.

Yet, when a health effects report used to justify the new trucking regulations was written by CARB staffer Hien Tran, Enstrom's study was misquoted and discounted, as were others that don't support the notion that PM2.5 kills.

Tran, it was discovered by Enstrom and others, had lied about having a Ph.D in statistics from UC Davis.

Enstrom's bell clanging over Tran later revealed that CARB chairwoman Mary Nichols knew about Tran's falsification but kept mum to other board members until after they voted to approve the trucking rules.

As an aside, I'm still aghast that both Tran and Nichols have kept their jobs. Really, we can't find two people in the entire state who can do this job honorably?

### **Making friends**

Back to Enstrom. He also single-handedly got scientist John Froines kicked off the Scientific Review Panel, a state organization tasked with identifying toxic contaminants.

And, as luck would have it, Froines is a voting faculty member of UCLA's Environmental Sciences Department.

It was the Scientific Review Panel that in the 1990s declared diesel exhaust is toxic. That declaration triggered CARB to gin up regulations to reduce the amount of diesel PM2.5 in the air, which is what brought on the truck and heavy equipment regulations we're now facing.

Scientists are supposed to apply for and be appointed to the Scientific Review Panel on three-year terms. Froines was appointed in 1984 and continued to sit on that panel for more than 25 years though he was only reappointed a couple of times in the early years.

It's not just an issue of needing new blood. The Scientific Review Panel verifies and approves methodologies for studies that are government-funded.

Froines is also head of the Southern California Particle Center, which conducts such government-funded studies. All of which makes his de facto lifetime appointment seem more than a little conflictly.

When Enstrom brought that to the attention of the Legislature, Froines was kicked off the panel.

I called Froines to see how he felt about that and his views on Enstrom but he didn't call back.

### **The offense of not going along**

Enstrom told me he doesn't believe his colleagues have done bad science, per se, on air pollution.

His main concern has been with how one-sided and self-fulfilling the entire system has become.

CARB exists to regulate air pollution. It funds studies looking for ill effects of air pollution. Any effects found are used to justify more regulations and, hence, more studies.

Finding "no effects" doesn't fit into that cycle.

Then, of course, there's ego.

A scientist's work is considered more important if it points out a hazard rather than saying "everything's fine," Phalen said.

"Jim's work offends people because it diminishes the importance of their work," Phalen said.

Even accidental findings of "no effects" have been ignored.

In one major national study by Daniel Krewski, a map shows PM2.5 had little to no effect of premature deaths in California. And just recently Michael Jerrett revealed preliminary data from his CARB-funded California specific study that also showed little to no evidence of premature death from PM2.5 exposure.

That map has since disappeared from later uses of the Krewski study. And Jerrett has said perhaps mortality calculations should be changed.

"They've decided that no one else can have a say," Enstrom said. "Valid research is being stifled."

Enstrom had been in line to receive funding for a new study from the Health Effects Institute, but that likely won't happen after he loses his UCLA position.

All of this may seem like so much academic inside baseball. But these studies and how they're treated result in regulations that have real-life consequences.

Phalen noted that we are in a period in our culture where science is used to fuel movements rather than to elucidate. Going against the movement puts careers at risk.

Phalen himself is no stranger to swimming against the tide, having published a book in 2002 titled "The Particulate Air Pollution Controversy." He concluded that our hamfisted manner of setting environmental standards has created a regulatory environment that doesn't consider secondary consequences and may result in more harm than good.

Though Phalen couldn't say whether that book cost him his position on Froines' Southern California Particle Center, he wasn't reappointed after it was published.

So much for welcoming diversity of thought.

Opinions expressed in this column are those of Lois Henry, not The Bakersfield Californian. Her column appears Wednesdays and Sundays. Comment at [people.bakersfield.com/home/Blog/noholdsbarred](http://people.bakersfield.com/home/Blog/noholdsbarred), call her at 395-7373 or e-mail [lhenny@bakersfield.com](mailto:lhenny@bakersfield.com)

<http://www.bakersfield.com/news/local/x618251275/Air-board-must-be-held-accountable>

**The Bakersfield Californian    October 10, 2010**

## **LOIS HENRY: Air board must be held accountable**

The Bakersfield Californian | Saturday, Oct 09 2010 09:49 PM

Last Updated Saturday, Oct 09 2010 10:07 PM

Here's a topic for the next governor's debate: If elected, would you investigate the California Air Resources Board for fraud?

Oh, did I say the "f" word?

Absolutely.

This agency is out of control and, I believe, has perpetrated an outright fraud on the people of this state.

And, no, I'm not just talking about how the agency was recently forced to admit it was wrong about the amount of diesel emissions that heavy construction contributes to air pollution.

*(They were off by 340 percent and had even "overestimated" how much diesel fuel was being used per year, saying the industry used 1 billion gallons a year when it was closer to*

*250,000 gallons a year. The correct information was readily available through the Franchise Tax Board, by the way.)*

Nor the fact that, per its own report on Aug. 31, the number of people who supposedly die prematurely due to exposure to PM2.5, tiny particulate matter such as dust and soot, inexplicably dropped from 18,000 to 9,200.

*(In two CARB reports from 2006 and 2008, used to justify regulations of off-road construction equipment and on-road diesel trucks, premature deaths were pegged at 18,000. About 3,500 of those were supposedly due specifically to diesel PM2.5. CARB's Aug. 31 report claims the number of premature deaths is now 9,200 with no explanation for the decrease and no mention of the 3,500 supposed diesel PM2.5 deaths. Curious.)*

And, though this is reason enough for a fraud investigation, I'm not referring to revelations that the man who wrote those 2006 and 2008 reports lied about his credentials.

*(When that issue was brought to the attention of CARB board chairwoman Mary Nichols and at least three other board members, it was not shared with the full board until after a critical vote for draconian new rules limiting emissions from on-road truck emissions. Can you say coverup?)*

And I'm not even using the "f" (fraud! Come on, this is a family paper!) word because more and more science is showing there is little to no evidence of premature deaths in California caused by exposure to PM2.5.

*(Last February, Michael Jerrett a UC Berkeley scientist hired by CARB to look at California specifically, gave preliminary results showing zero effect of PM2.5 on all mortality. Oh, and that new CARB health report put out Aug. 31 relies on a 2009 national study that shows there is no mortality effect in California from these emissions.)*

Incredibly, there's more.

Remember James Enstrom? He's the UCLA scientist who did a study in 2005 of older Californians that showed few if any premature deaths from PM2.5 exposure and tried to get someone, anyone's, attention over at CARB.

Not only was his study essentially thrown away, his employment at UCLA is now under threat. He's apparently in trouble for voicing concerns about CARB's recklessness. Well, while Enstrom's been waiting for the appeals of his dismissal to run their courses, he's done a little digging, specifically into the 2009 Health Effects Institute report that CARB and the Environmental Protection Agency used to gin up this new PM2.5 death toll of 9,200.

The study was actually an extended follow-up of a 2000 Health Effects Institute report looking at PM2.5's effects nationally. It was done by Daniel Krewski and co-authored by Jerrett, who's now doing the California-specific study for CARB, which Krewski is also working on, by the by.

At the urging of the California Dump Truck Owner's Association, Krewski did a separate analysis that teased out the California specific information from his 2009 Health Effects Institute follow-up study. Statistically, this analysis showed hardly any premature deaths from these particulates.

In a letter to CARB, Krewski warned that because so few areas in California were used (Fresno, San Francisco, San Jose and Los Angeles counties), the information was statistically limited.

Even so, Enstrom was curious about Krewski's information and delved more deeply into the numbers.

Using as much of Krewski's data and methodology as he could glean from the 2000 Health Effects Institute report, Enstrom ranked the areas that were monitored for levels of PM2.5 and assessed their relative risk for premature deaths.

Fresno ranked third lowest for levels of PM2.5. Hmmm. We're not even allowed to light fires on cold winter nights in the Central Valley for fear of the dreaded PM2.5. San Francisco and San Jose ranked eighth and ninth lowest, respectively, and Los Angeles was 39th out of the 49 areas originally monitored (in 2009 Krewski extended the study to include 116 cities).

When he assessed relative risk of premature death and averaged it for each geographic region, Enstrom found that California ranked well below the national average for risk. He double-checked his numbers using other studies, including Jerrett's preliminary results and two other independent studies, and found them consistent.

All of Entstrom's number-crunching also fits perfectly with a map in the original 2000 Krewski Health Effects Institute report, which showed levels of PM2.5 and mortality risk for the 49 areas across the U.S. Then using another Krewski chart showing PM2.5 and mortality risk, Enstrom ranked each area. In that ranking, Fresno is 2nd lowest in mortality risk and Los Angeles is fifth lowest of the 49 areas.

That compliments another study of Medicare enrollees in the western U.S., by Scott Zeger, 2008, that showed while Los Angeles is high in PM2.5, its total associated death rate is low.

"What this means is there absolutely is geographic variation in PM2.5 mortality risk and I think Krewski and Jerrett must have known this for at least the last 10 years," Enstrom said. "Instead of bringing it to someone's attention they've watched their work be used in ways that are unacceptable."

Not only by CARB. The EPA is about to lower the national standard for PM2.5 from 15 micrograms per cubic meter to 11.

"Which just makes no sense considering the obvious geographic variation," Enstrom said. "And it certainly makes no sense in California when there's no relationship between PM2.5 and premature death.

"It's a complete misrepresentation of the science."

And that's where I believe fraud comes into play.

Some people -- especially CARB's leadership -- must have known about this information for years. But these are the same people holding the state's regulatory reins. That means power.

And power, as we all know, is far more toxic than even the most deadly PM2.5.

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<http://www.bakersfield.com/news/local/x1613299841/LOIS-HENRY-Air-pollution-deaths-all-over-the-map>

## **The Bakersfield Californian    November 14, 2010**

### **LOIS HENRY: Air pollution "deaths" all over the map**

The Bakersfield Californian | Sunday, Nov 14 2010 10:00 AM

Last Updated Sunday, Nov 14 2010 10:00 AM

So, according to the attorney representing a local environmental group, the California Air Resources Board (CARB) has been twiddling its thumbs on regulations "when people are dying."

This was in conjunction with a threat by the federal Environmental Protection Agency last week to withhold the state's highway funding if CARB doesn't get off the stick and come up with a plan to rid our air of "deadly" soot, otherwise known as particulate matter, or specifically PM2.5.

If I didn't know better, all this would almost seem like a propaganda run up to CARB's Dec. 16 meeting at which board members will consider amendments to regulations adopted in 2007 and 2008 that strictly curtailed emissions from trucks, buses and heavy construction equipment.

The proposed amendments are intended to ease that regulatory noose somewhat, but CARB staff are adamant some version of the rules are needed to meet federal air standards -- hence the EPA saber rattling.

The rules were so stringent initially that many operators feared they would not be able to afford the required retrofits (from \$15,000 up to \$80,000 per vehicle depending on model) or equipment replacement mandates.

In the past, CARB's approach was to allow industry to retire older, more polluting equipment, reducing pollution through attrition.

But there was a new urgency behind these rules based on the idea that PM2.5, in particular diesel PM2.5, was killing Californians by the thousands.

Anyone who's read my column for any length of time knows I believe the EPA and CARB have systematically ignored studies that show zero effect of so-called premature deaths from PM2.5 in California and other western states, so there's no real need for these rules at all.

But lets set that aside for a moment and just look at the body count.

Err, make that body counts. 'Cause for a bunch of dead people, these alleged PM2.5 victims bounce around more than a roomful of toddlers on a sugar high.

I was told by CARB staffers that the science is "subtle" and "nuanced." And that the scientists who study this stuff "speak in a complex language" to discern air pollution's impact on the general public.

If there's confusion, I was told, that's a failure of the public information arm of CARB, not the science.

Yeah.

The only subtleties I'm seeing are in how CARB words these reports to elicit the maximum fear factor.

As a primer, you need to know that there is diesel PM2.5 and just all around, or "ambient" PM2.5.

Sometimes CARB researchers separated out the effects of diesel PM2.5 from heavy construction equipment and trucks and buses. And sometimes they lumped the effects of both categories together, explained Linda Smith, chief of CARB's health branch in its research division.

And despite the fact that the reports I reviewed were very specifically supposed to assess the health effects of diesel PM2.5, they occasionally mixed in ambient PM2.5 or even premature deaths from ozone.

So much for scientific exactitude.

OK, so in 2006, CARB estimated 2,400 Californians bought the farm early from exposure to diesel PM2.5 (well, ozone was included too, Smith said. And this report looked at all goods transport, which could include heavy equipment or trucks.)

That was the report used to justify the heavy equipment rules in 2007, by the way.

The 2008 report that spawned the rule for trucks and buses went through a few iterations.

In a May draft version, it said there were 3,900 annual premature deaths due to diesel PM2.5. In the final version, that diesel number was reduced to 3,500.

The change was because they looked at air data from 2000 for the draft and 2005 for the final, according to another CARB staffer.

That explanation seems pretty thin to me. I mean, if the report was done in 2008, surely 2005 air data was available for the May draft version. If not, perhaps 2004? Or even 2003? No?

OK, moving on.

CARB put out a new report on the PM2.5 scourge this past August and said it causes 9,200 premature deaths in California every year. That's overall PM2.5, no break down of diesel PM2.5.

Smith told me CARB would be updating its figures to show that of those 9,200 deaths, about 2,000 a year are due to diesel PM2.5.

She said the changing numbers reflect "new methodology and the latest information."

Given revelations about how CARB has done business in the recent past -- attempting to cover up that the author of those key 2006 and 2008 reports lied about his credentials and then overestimating how much trucks and heavy equipment contribute to air pollution by more than 80 percent -- I'm thinking there's a different reason these premature death numbers vary so widely.

Selective interpretation of the data in order to extract a desired outcome comes to mind.

According to CARB's latest calculations, they believe that from 2010 to 2025 the on-road rule will help keep 3,500 people on this side of the dirt.

That's 233 deaths avoided per year.

And they believe that between 2010 and 2029, their off-road rule will save the lives of 470 people, or 25 per year.

Sooooo, we're saddling California businesses with expensive regulations at a time when they can ill afford it in the name of perhaps, maybe, saving 258 lives a year (if CARB's numbers can be believed). For perspective's sake, about 250,000 Californians die every year of all causes.

That's a pretty expensive maybe.

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### Getting in touch with CARB

CARB's meeting to consider ammendments to the truck and heavy equipment emissions rules will be held December 16 in Sacramento.

The meeting will be webcast at:

<http://www.calepa.ca.gov/broadcast/?BDO=1>

And you can submit comments by mail or eletronically. The deadline for submitted comments is Dec. 15 by noon.

Send comments to:

Clerk of the Board, Air Resources Board  
1001 I Street, Sacramento, California 95814

Or go to this site:

<http://www.arb.ca.gov/lispub/comm/bclist.php>

And scroll down to the the topic listed as "Two Notices of Public Hearing for Proposed Amendments" and click on the link there.

You can find more information about CARB at their website:

<http://www.arb.ca.gov/homepage.htm>



<http://www.bakersfield.com/news/columnist/henry/x1902890284/Politics-air-rules-make-for-a-smelly-situation>

## **The Bakersfield Californian    February 20, 2011**

### **LOIS HENRY: Politics, air rules make for a smelly situation**

**The Bakersfield Californian | Saturday, Feb 19 2011 10:00 PM**

Last Updated Saturday, Feb 19 2011 10:09 PM

This story is a depressing testament to how -- as you've always suspected -- nothing every really changes in the bowels of state government.

Last summer, several de facto lifetime members of a powerful but obscure panel in California's air pollution regulation arena were publicly booted as the state faced a lawsuit over their improperly long tenures.

Finally, many thought, the panel would have fresh blood, new perspectives.

But at this year's first meeting of that panel two of the bootees, including the panel chairman, were wondrously restored to their seats, leaving observers shaking their heads. I'm talking about the Scientific Review Panel of Toxic Air Contaminants.

I know, you've never heard of it. But this panel has a direct impact on your cozy little life, so read on.

It was the review panel that declared in 1998 that diesel exhaust, specifically diesel particulate matter (specifically PM2.5 tiny bits of soot and ash), is dangerous to humans.

That pronouncement teed up the regulatory push by the California Air Resources Board (CARB) to severely restrict emissions from diesel trucks and heavy equipment. The rules have been delayed until 2014 for a number of reasons, not the least of which is that CARB staff vastly overestimated how much those vehicles contribute to air pollution.

But the rules will come to pass.

Which means unless you wear animal skins and eat grubs, you'll be paying way more for anything (food, medicine, furniture, etc., etc.) that comes to you by way of truck as owners struggle to pay for expensive retrofits or whole new fleets.

I've argued numerous times that more and more evidence is showing diesel PM2.5 may not be the killer CARB and the Scientific Review Panel have made it out to be.

Setting that aside for the moment, I think it's important to know who's on the Scientific Review Panel.

The Pacific Legal Foundation thought so too and after discovering several members had been serving since the Reagan administration (the first one) without going through the proper vetting

and nomination process, they sued the state. Yes, the foundation is a conservative group funded in part by the trucking industry.

That doesn't negate their point that, by ignoring nomination procedures, the review panel and the public have been effectively denied the benefit of having new people with innovative ideas and fresh thinking participate.

The state took heed and last July five members, including chairman and UCLA professor John Froines, were summarily kicked off the Scientific Review Panel.

Froines' reinstatement is especially galling to many industry groups because he has been a longtime, outspoken activist on the supposed ills of diesel exhaust.

Froines, a left of left liberal whose activism goes back to the radicalism of the 1960s, also directs the Southern California Particle Center, dedicated to proving how diesel PM2.5 hurts people. I don't understand how that's not a huge conflict of interest.

See, the Scientific Review Panel also approves methodologies for government-funded studies. Froines' Particle Center conducts just those sorts of government-funded studies.

So, not only is he in a position to shut down any oppositional research, he can also churn out practically unlimited "science" to support his own theories that diesel = bad.

Which then revs up CARB's regulatory engine and results in higher costs for you and I in exchange for questionable, at best, health benefits. Clearly, it's become a closed system.

It has a direct impact on how we live and we, the people funding this system, have almost no recourse in how it operates.

Critics had thought Pacific Legal Foundation's lawsuit punched a hole in the system last summer. And, indeed, a new person had been appointed as chair of the Scientific Review Panel, but only briefly.

Assembly Speaker John Perez appointed UC Irvine professor Michael Kleinman to replace Froines on July 22 after receiving a list of eligible candidates from the University of California office of the President.

Kleinman, like Froines, was eminently qualified and was looking forward to serving on the panel. Then around Sept. 8, he told me, the Speaker's office called and asked him to step down.

He was told the UC president's office erroneously thought it could not resubmit Froines' name because of his previous tenure. When it was determined Froines' could be a candidate Kleinman was asked to resign. The Speaker got a new set of names from the UC, which included Froines, and the deal was done.

Kleinman characterized the entire episode as strange and "highly charged."

Neither the UC President's office nor the Speaker's office would cop to having been lobbied to

put Froines back on the panel. But I say that's exactly what it smells like.

"It does seem like an end run," said Pacific Legal Foundation attorney Damien Schiff, though he admitted that if they went through the proper procedures the state is within the letter of the law.

Even so, he said, his clients object to Froines' appointment as violating the intent of the Scientific Review Panel, which was supposed to be free of politics and strictly adhere to science.

Instead, the head of the UC and the Assembly Speaker practically twisted themselves into knots to put Froines back in charge, even though other, highly competent, people were ready and willing to serve.

CARB has made a series of gaffes in recent years such as overestimating diesel emissions. The number of deaths attributable to PM2.5 was also over inflated, it turned out. And CARB chairwoman Mary Nichols admitted she withheld key information from fellow board members that the author of a health report used to justify the diesel rules lied about his credentials until after they voted for the rules. Given all that, you'd think the state would at least want to appear to be playing fair.

But mixing power, arrogance and politics doesn't often result in "fair."

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<http://www.bakersfield.com/news/columnist/henry/x560461816/New-study-doesnt-hit-the-mark-for-air-pollution-deaths>

## **The Bakersfield Californian August 17, 2011**

### **LOIS HENRY: New study doesn't hit the mark for air pollution deaths**

The Bakersfield Californian | Wednesday, Aug 17 2011 05:00 AM

Last Updated Wednesday, Aug 17 2011 05:00 AM

Don't be surprised if you see some coverage soon about a new study claiming that fine particulate matter (PM2.5) could be killing thousands of Californians every year.

The study will likely be touted as "confirmation" of previous work that first made PM2.5 a health scare in the early 1990s.

Don't be further surprised if this new study is then used by the California Air Resources Board (CARB) to gin up more regulations that will make it harder to drive a diesel truck or run most businesses in this state.

That's how it works: A study says we're all gonna die and CARB rides in to slay whatever dragon a handful of scientists claim to see.

Before you get all puffed up, I'm not some kind of air pollution advocate.

Our approach to cleaning the air must be reasonable, however. And that's where I say we've gone off the rails, chasing ever smaller returns at an ever greater cost.

I think a close examination of the science bears me out.

Right now, we're in a period when the public can read and comment on the new study. But that rarely happens.

Yet it's a crucial moment. It's when scientists claim there is an identifiable link between air pollution and premature deaths. That link is called the hazard ratio.

The hazard ratio is then used to come up with an actual number of human beings who -- supposedly -- will be felled by too many whiffs of PM2.5. The costs of those deaths are then weighed against regulatory costs. That ratio then justifies the rules.

For example, in 2006, CARB said diesel PM2.5 and ozone from ports and goods movement caused 2,400 premature deaths a year (see box for more info on death estimates) at a cost of \$19 billion. They proposed a host of rules -- at an annual cost of between \$200 million and \$300 million -- to cut emissions. So, for every \$1 invested toward reducing pollution, there would be \$3 to \$8 in benefits from avoided health costs, mostly from premature deaths, CARB said.

This new California-specific study, by Michael Jerrett, C. Arden Pope and a group of other like-minded air pollution scientists, pegs the hazard ratio for all causes of premature deaths at 1.08.

Which means that exposure to PM2.5 (at concentrations of 10 micrograms per cubic meter) elevates our risk of dying prematurely by 8 percent -- maybe.

The authors called that significant, and it could be. But, oh those devilish details, how they can change the balance.

Jerrett and Pope looked at PM2.5 and premature deaths under eight other models, each of which came back with zero effect of premature death.

Only one model showed any effect worth noting. It was a model no one had used before called "conurbation" in which California was carved into five big pieces.

Jerrett told me he had to create these conurbations to make up for the fact that death rates overall are far lower in urban areas like Los Angeles than in rural areas like Kern County.

OK, so they have one model out of nine that shows any kind of effect.

A deeper look, however, shows the range of uncertainty for even that model hits the zero mark. As in, PM2.5 isn't putting anyone six feet under before their time.

Another weakness: they used data from 1982 to 2000. Our air quality has improved vastly since the 1980s, or even the 1990s.

Two other recent California studies (Zeger, 2008 and Lipsett, 2011) both using more up-to-date data from 2000-2005 show no effect of premature death from PM2.5.

I say the Jerrett's and Pope's conclusion of a "significant" effect is a pretty big reach, especially considering how costly CARB regulations can be -- expensive filtration devices and requirements that operators phase out entire engine models by buying whole new fleets, etc.

Since this conurbation model is so new (Jerrett didn't even list it in his methodology outline when he got funding for the study from CARB) and the effect seems so slight, I wondered if the authors would recommend further study before CARB uses the study to craft new policies.

Nope.

His model is "state of the art" and represents the "best estimates available" of premature deaths from PM2.5 exposure, Jerrett said.

Pope was more circumspect saying public policy is a judgement call and his work is just focused on the science.

Yeah, but science is the foundation for regulations. Well, some science anyway.

CARB has routinely ignored other studies that show no effect of premature death from PM2.5. Now they've put out numbers that suggest the new rules will lead to 291 fewer deaths a year?

I don't see it.

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When you realize we tipped into violation land as of Thursday afternoon -- basically, because the wind stopped blowing -- you have to wonder at the usefulness of the Environmental Protection Agency's stick-stick approach to our air.

I think it makes more sense to set a number of annual goals based on where we are right now -- you know, something realistically achievable -- and measure our progress toward those goals.

Or we can keep playing an unwinnable game.

Just a thought.

\*\*\*

Not sure everyone caught federal Judge Oliver Wanger's decision on the government's biological opinion regarding the Delta smelt. He sent it back to be reworked.

But even more interesting was how he absolutely fried the government scientists who wrote the report.

(Check it out on New York Times reporter Felicity Barringer's blog:  
<http://green.blogs.nytimes.com/2011/09/21/more-interior-scientists-are-taking-heat/>)

The scientists who came under Wanger's rain of fire in open court Monday were Frederick V. Feyrer of the Bureau of Reclamation and Jennifer M. Norris of the Fish and Wildlife Service.

As to Norris, Wanger said, "...she may be honest, but she has not been honest with this court. I find her incredible as a witness.... I've never seen anything like it."

He was no kinder to Feyrer saying of his work: "...it is an attempt to mislead and to deceive the court into accepting not only what is not the best science, it's not science."

Of their report overall, he called it, "...an answer searching for a question. It is an ends/means equation where the end justified the means no matter how you get there."

Because Feyrer and Norris work for the government, they are in a powerful position to push their own agenda, regardless of the truth, something not lost on Wanger.

"...protecting endangered species is crucially important," he said. "But when it overwhelms us to the point that we lose objectivity, we lose honesty, we're all in a lot of trouble. Serious, serious trouble."

\*\*\*

Wanger's words reminded me of Hien Tran, a "scientist" with the California Air Resources Board.

Tran wrote a highly flawed report on the supposed effects of diesel particulate matter (PM2.5) that was used to justify draconian new truck and heavy equipment regulations.

Tran's report staunchly ignored studies showing no evidence of premature deaths from diesel PM2.5 in California.

The author of one of those neglected studies, UCLA associate research professor James Enstrom, began questioning Tran's report and later discovered Tran had lied about having a Ph.D from UC Davis.

He brought that to the attention of some of CARB's upper management, including board Chair Mary Nichols. She purposely kept that information from the other board members prior to their vote on the new truck/heavy equipment rules.

Because of Enstrom's tenacity, Nichols was forced to admit her cover up.

Tran was demoted and a new report was ginned up that, shockingly, supported the truck/heavy equipment rules (there's that ends justifying the means again).

Nichols is still the board chair.

Meanwhile, Enstrom's colleagues in UCLA's Environmental Health Sciences Department voted to fire him after 34 years because "your research is not aligned with the academic mission of the Department," according to their dismissal letter.

Enstrom's research was absolutely in step with the mission, which is described as furthering research and education "at the interface between human health and the environment."

But his conclusions were not in step with popular thinking that air pollution is killing us.

After a year of fighting the dismissal Enstrom was recently granted another year of employment.

So liars and officials who participate in coverups are still chugging away while a guy who only wanted an honest playing field can't plan on a paycheck beyond next year.

Wanger nailed it: "Serious, serious trouble."

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<http://www.bakersfield.com/news/columnist/henry/x1347873497/LOIS-HENRY-Air-Board-study-in-error-They-dont-seem-to-care>

## **The Bakersfield Californian    November 30, 2011**

### **LOIS HENRY: Air Board study in error? They don't seem to care**

By Lois Henry Californian Columnist  
[henry@bakersfield.com](mailto:henry@bakersfield.com) | Wednesday, Nov 30 2011 04:00 AM

Last Updated Wednesday, Nov 30 2011 04:00 AM

You'd think I would cease to be amazed at the "damn the facts, full speed ahead" MO exhibited by California's air pollution cabal.

And yet, here I sit, astounded once again.

Not only did an obscure but important committee in the bowels of the California Air Resources Board recently ignore dozens of pages of serious criticisms of a new pollution study, but at least one committee member seems to have zero understanding of how such studies are used to create regulations that affect all of us out here in real people land.

The Research Screening Committee should be where regulators, scientists and the public tear into a study's methodology and conclusions. Challenge the science and make it stand up, or ditch it.

Instead, criticisms were staunchly ignored. The committee rubber stamped it last month without a backward glance.

OK, I'll stop ranting and catch you up.

A couple months ago, I alerted you to a new study that was intended as the final word, sort of, on the health effects of air pollution in California.

Specifically, it was supposed to nail down the terrible doings of PM2.5, tiny particulate matter from dust and soot, which supposedly lays waste to thousands of Californians every year by making them die "prematurely."

The study was written by Berkeley Professor Michael Jerrett and a few others.

It is very complex and looks at PM2.5's "hazard ratio" through nine different models. The higher the hazard ratio, the greater your chances of dying from too many whiffs of PM2.5. (See box.)

Only one of the nine models showed a slightly elevated hazard ratio -- 1.08. A hazard ratio of 1 is null, meaning no risk.

So, even that finding is statistically insignificant.

Considering how CARB uses these studies to require industry to get expensive retrofits and other devices (that don't work... oops, sorry, that's another column), or replace their vehicle fleets entirely, I felt Jerrett's 1.08 was too little and based on flimsy numbers.

I wasn't alone. Other people way smarter than me chimed in with more than 50 pages of criticisms outlining the many ways they felt the study was flawed.

They listed all kinds of issues from a lack of knowledge about actual inhalation levels to not incorporating changes in PM2.5 levels over time (they've been going down).

Most upsetting to critics was that the study's conclusion -- the only part most people will read -- calls the relationship between PM2.5 and all causes of death "significant" despite the fact that only one of nine models showed any blip at all in the hazard ratio.

The study's own findings do not support such a conclusion. It's misleading.

Eh, no bother.

The Research Screening Committee approved it lockstep.

I suppose I shouldn't be surprised given some of the discussion at the committee's June 9 meeting, when it took public comments about the study.

Committee member Irva Hertz-Pioccotto, a public health sciences professor at UC Davis and epidemiologist, went on at some length about how she didn't understand why critics were focusing on "all cause" deaths.

That, to her, didn't matter since the connection between PM2.5 and cardio-vascular disease is well established. She added the same was true for deaths from respiratory disease.

Wrong. Even the Jerrett study shows no elevated risk for respiratory death from PM2.5 exposure.

Her brush off of the "all cause" category is more concerning, however.

The all cause category is the only one that's allowed to be used to make regulations. It's supposedly why we engage in all this rigamarole in the first place.

I emailed Hertz-Pioccotto Tuesday afternoon, but did not receive a reply.

I know I should be more jaded by now. But I really continue to be amazed at the monolithic attitude against a real discussion of air pollution science.

Or, maybe I'm giving CARB, et. al., too much credit.

Perhaps they're just lazy.

## **By the numbers**

Using hazard ratios for all causes of death due to exposure to PM2.5 from a variety of studies, CARB has come up with what it says are actual numbers of Californians who die "prematurely" each year.

These numbers have bounced around, mostly spiralling downward.

Here's the most recent: CARB says 9,200 Californians die each year from exposure to general PM2.5.

About 2,000 of those deaths can be attributed to diesel PM2.5, specifically, according to CARB.

They have used these numbers to justify the estimated costs of their new truck and heavy equipment rules, \$300 million a year versus \$19 billion a year in supposed health care costs from all those premature deaths.

Over the life of that rule, going into effect Jan. 1, 2012 through 2023, CARB estimates about 3,000 lives will be saved, or 291 per year.

*Opinions expressed in this column are those of Lois Henry, not The Bakersfield Californian. Her column appears Wednesdays and Sundays. Comment at <http://www.bakersfield.com>, call her at (661) 395-7373 or e-mail [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com)*

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<http://www.bakersfieldcalifornian.com/health/x1322083219/The-ex-radical-who-heads-air-boards-key-panel>

## **The Bakersfield Californian    April 15, 2012**

**Lois Henry Column**

**Sunday, Apr 15 2012 11:00 AM**

### **[The ex-radical who heads air board's key panel](#)**

By The Bakersfield Californian

Change may be the only constant in the real world but that doesn't seem to include the Scientific Review Panel.

Don't fret if you've never heard of it. It's one of those obscure governmental "no-see-ums" that do their business in relative anonymity and by the time you figure out you've been stung, you're left swatting at empty air.

It was the Scientific Review Panel that first declared PM2.5 (tiny particulate matter made up of dust and soot) in diesel exhaust a dangerous air contaminant in 1998.

Next thing you know -- ZAP! -- the California Air Resources Board cooked up the truck and bus rules that are costing operators hundreds of thousands of dollars as they're forced to buy expensive filtration equipment or replace their fleets entirely in the next few years.

So, who's running the panel is kind of important.

Which brings us to John Froines, a long time UCLA toxicology professor, now retired.

He is the chairman of the panel and was reappointed a few weeks ago to another three-year term. It will be his 10th term, meaning he's been on this key but very overlooked panel for the past 28 years. He's been the chairman since 1997.

I see a couple problems with this.

First, Froines' near lifetime clamp on this panel blocks out fresh perspectives and diversity of thought.

Second, Froines' own actions and statements over his career show he is an activist driven by political agendas -- not science.

I first wrote about his involvement with this panel last year.

That story chronicled how Froines was briefly booted off the panel following a lawsuit by the conservative Pacific Legal Foundation.

The group sued the state after learning no one had been bothering to at least go through the legally required motions for reappointing Froines and a handful of others to the panel, giving them de facto lifetime positions.

Ultimately, five members of the nine-member panel were replaced in the summer of 2010.

That included Froines -- initially.

Assembly Speaker John Perez had appointed UC Irvine professor Michael Kleinman to replace Froines but later asked him to step down and reappointed Froines to the chair.

I spoke with Kleinman about the turn of events last year, which he characterized as "strange and highly charged."

It's not strange when you learn a little more about Froines.

Froines is an activist. And he makes no bones about the fact that he believes science should be used to improve society.

He didn't return my calls last year and I got the same treatment this year.

But Internet searches paint a pretty good portrait of the man and his agenda.

Froines is a Berkeley and Yale-educated chemist. His biggest claim to fame -- or infamy -- in his early years was being a member of the Chicago 7. For you younger readers, the Chicago 7 was an anti-war group charged with inciting riots at the 1968 Democratic Convention.

Froines and Lee Weiner were the only two defendants acquitted. They had been charged with making "incendiary devices," stink bombs.

One of Froines' co-defendants was Tom Hayden, who later went on to become a powerful and environmentally active California state legislator serving from 1982 to 2000.

Froines' connection to Hayden actually started before the Chicago 7.

After coming to the University of Oregon in 1967 to teach, Froines quickly became the faculty advisor for Students for a Democratic Society, a politically charged group Hayden helped found in the early 1960s, according to a 2003 paper on scientific activism written by University of Oregon student Katie Drueding.

In 1969, Froines took an unpaid leave to deal with the Chicago 7 indictment.

He later implied he'd been told by the university that he would have to remove politics from his work as a scientist and teacher in order to return to the school.

He refused and instead resigned in 1970.

In a lengthy farewell statement, quoted by Drueding, Froines complained that science and society aren't compatible as long as society was "deformed."

So, he apparently went about fixing it.

After the University of Oregon, he left the world of pure research and entered the realm of applied science in public service to "improve lives," Drueding wrote.

Froines became Director of Toxic Substances at the Occupational Safety and Health Administration and then Deputy Director of the National Institute for Occupational Safety and Health.

He recently retired from UCLA but remains director of the university-affiliated Southern California Particle Center, dedicated to studying how particulate matter, such as is found in diesel exhaust, harms human health.

His goal of using science to fix society appears to have remained steadfast over time.

In 1999 , a UCLA publication noted that Froines had recently opened his Southern California Particle Center. His hope, according to that article, was that the center's focused science on particulate matter would eventually allow "new environmental standards for air particles, both in terms of public health and far-flung economic consequences."

In a 2007 interview with San Francisco public television station KQED, Froines gave an even clearer explanation of his views on science and 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. So it was about '74 when I decided that that was the path to take."

All of which tells me Froines believes science is a hammer that should be used to pound society into shape.

That's not my view.

But then I don't agree with much about how science, government and money interact these days.

Such as, I think it should be major no-no for anyone on the Scientific Review Panel to get funding from the very boards the panel advises (i.e. the California Air Resources board) to pay for studies that A) support the panel's views and B) fuel more regulation for the very boards that funded the studies.

That's like a conflict of interest times three. But it goes on every day.

In Froines' case, he's taken millions from the California Air Resources board, to fund the start-up of his particle center and for various studies all geared toward bolstering his theories.

That's just not right.

And it's certainly not in keeping with the original intent of the Scientific Review Panel, that it focus purely on science free of politics.

Froines himself has told the world he's unwilling to divorce the two. So why is he still there?

*Opinions expressed in this column are those of Lois Henry, not The Bakersfield Californian. Her column appears Wednesdays and Sundays. Comment at <http://www.bakersfield.com>, call her at (661) 395-7373 or e-mail [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com)*

## Related Info

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## **The Bakersfield Californian    May 13, 2012**

### **LOIS HENRY: UC President's visit didn't exactly clear the air**

**BY LOIS HENRY Californian columnist**  
[lhenny@bakersfield.com](mailto:lhenny@bakersfield.com) | Sunday, May 13 2012 04:00 AM

Last Updated Sunday, May 13 2012 04:00 AM

I feel snubbed.

I know he said it was just bad timing.

But I can't help feeling it was me. Perhaps something I said?

University of California President Mark Yudof made a quick swing through the valley and stopped at Bakersfield High School last Tuesday to, somehow with a straight face, tell students that UC is still an affordable option for them. Ha! Good one.

Behind the scenes, I'd been bugging Yudof's people to have him meet with The Californian's Editorial Board after his gig at BHS. He was meeting with the Fresno Bee's edit board, after all. What are we? Chopped liver?

OK, fine, they finally told my boss. We'd get a half hour, from 2 to 2:30 p.m.

I let Yudof's front man know that I had some specific questions about his nominations to a certain state board.

You can imagine my disappointment when I got word last Friday, May 4, that Yudof wouldn't be popping in, not even for a measly half hour. He wanted to get to LA before traffic closed in. Oh, come on.

This dude hauls down more than \$800k a year in taxpayer loot including his housing allowance and pension. Plus he's a lawyer, for cripes sake. I'm pretty sure he could handle a pipsqueak like me.

All I wanted to know was why Yudof keeps nominating the same guy -- John Froines -- to the Scientific Review Panel despite Froines' 28-year run on the panel. Not to mention that Froines and several others were booted off the panel in 2010 after a lawsuit pointed out they hadn't been properly reappointed in decades.

And why, I wanted to know, does Yudof's nomination letter this last go-round say he's putting Froines on the list at the behest of Assembly Speaker John Perez?

As background, the Scientific Review Panel is a state board that has provided the underpinning for much of California's air pollution regulation by declaring which substances are toxic air contaminants.

It consists of nine scientists who are supposed to provide a strictly scientific basis for the regulations. No politics allowed, or at least that was the intent of the original law under which it was created. Which is why nominations have to come from Yudof's office, supposedly beyond the reach of politics.

My contention, however, is that this panel has been polluted by politics for years and now it's happening with Yudof's complicity.

Although Yudof ditched me, the UC bigwigs did have Provost Larry Pitts speak to me by phone about my questions and concerns.

Though he doesn't have anything to do with the nomination process and hadn't read Yudof's letter, he assured me that "as far as I can tell, the UC's roll has not been corrupted."

Uh huh.

He initially said that the nomination process, as outlined in California Health and Safety Code 39670 and 39671, allowed for incumbent panel members to be renominated at the request of the appointing authority, such as Speaker Perez.

No, it doesn't. It also doesn't say it's cool for the appointing authorities to suggest who Yudof should put on his nomination list.

I would assert, as I did to Provost Pitts, that the spirit of the law establishing the Scientific Review Panel clearly intended to remove politics.

Since Perez, and the other appointing bodies -- the California Environmental Protection Agency Secretary and Senate Rules Committee -- are politicians (i.e. full o' politics) Yudof shouldn't be taking direction from them. Sheesh!

As for Froines, the former "Chicago Seven" member has made no bones about the fact that he believes science should be used to alter society. He's an admitted activist who has dedicated his life to coming up with the "science" to promote an agenda.

Part of that agenda, according to the mission statement of his Southern California Particle Center, is to prove that PM2.5, tiny particulate matter from dust and exhaust, is a rampant killer that must be eradicated.

That means clamping down ever harder on diesel truck exhaust and other industry emissions, regardless of the economic impacts or the diminishing, if any, benefits.

Numerous studies have surfaced in recent years showing PM2.5 isn't killing anyone in California; the California Air Resources Board has been forced to lower its death estimates several times. But with his de facto lifetime position on the Scientific Review Panel, Froines has been able to ignore those facts and pursue his agenda.

He couldn't do that without the support of Perez, a powerful member of the Democratic caucus who's reliant on liberal environmentalist support for reelection. Supporting Froines makes Perez a "green" candidate.

And, of course, Perez happens to be one of the politicians holding the purse strings to the UC budget, a fact I'm sure Yudof is keenly aware of.

Ah, the circle of life.

While Yudof wouldn't confab with me on these topics, Provost Pitts did his best.

"I would argue strongly, definitively, that we are unaware of any political pressure with regards to who goes on the nomination list," he said. "Whether there are politics once the list leaves the office of the president, I can't tell you one way or the other."

Oh, believe me, it's not the PM2.5 making it hard to breathe, it's the politics.

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<http://www.bakersfieldcalifornian.com/columnists/lois-henry/x837007070/LOIS-HENRY-Cozy-emails-undermine-air-czars-integrity>

## **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/x511835350/LOIS-HENRY-Scientist-gagged-by-UCLA-wins-a-round-in-court>

## **The Bakersfield Californian     March 31, 2013**

Saturday, Mar 30 2013 10:30 PM

### **Scientist, gagged by UCLA, wins a round in court**

**By The Bakersfield Californian**

I was glad to learn a federal judge ruled recently that a former UCLA faculty member's civil rights lawsuit can go forward against the school.

By all appearances UCLA did, in fact, violate Jim Enstrom's first amendment rights, not to mention his 14th amendment rights, and purposely deprived him of the funding he needed just to shut him up on issues of air pollution.

He has stood by his own and others' studies that show Californians are not dying in droves because of air pollution, specifically PM2.5, tiny bits of particulate matter such as dust and soot.

But that isn't the opinion of the majority of Enstrom's former colleagues in UCLA's Environmental Health Sciences Department, many of whom enjoy lucrative grants from the California Air Resources Board (CARB) to churn out study after study claiming the state's ever shrinking pollution levels are causing ever greater harm.

Rather than proving Enstrom's studies wrong (which no one has done) with their own science, his colleagues voted him off the island, so to speak.

He appealed to the university to no avail and finally sued.

UCLA tried twice to get the case dismissed and lost both times.

Most recently, on March 18, Federal District Judge Jesus Bernal ruled that Enstrom's allegations have enough significance for the case to go forward.

Good for Enstrom, who may finally get some personal justice after three years of having his name dragged through the mud and his career left in tatters.

Other than that, however, this sordid tale has been bad for the rest of us. Bad for the notion of academic freedom, bad for increased, unnecessary regulations and bad for plain old-fashioned science.

For all those reasons, this case will be important to watch.

I first wrote about Enstrom's pending firing in August 2010.

Enstrom, who holds a Ph.D. in physics, had worked as a researcher at UCLA for 34 years without a single professional blemish.

As a non-tenured researcher he had to bring in his own money through grants and other awards to fund his salary and studies. UCLA administered the money and took a fee for its trouble.

Funny thing happened to all that money, about \$280,000 back in 2008 when Enstrom began to get more vocal about what he felt was fraud being perpetrated by the CARB. (He was right, by the way, but more on that in a bit.)

His money disappeared, said his attorney David French with the American Center for Law and Justice, a conservative civil rights group that's representing Enstrom at no charge.

Turns out UCLA was paying Enstrom's salary out of the wrong account without notifying him and the school was charging him for on-campus office space, which he never had. Not only that, the school closed one account in May, 2009 but didn't bother to tell him until early 2010.

Enstrom tried to get a full accounting of exactly what happened to his various funds but was stonewalled, French said.

"More than a year after his first request for an accounting, the school rebuked him for not taking care of the problem," French said. "How could he when he didn't know about it and had not control over the funds?"

"UCLA took more than \$100,000 from his accounts. That's why they were drained."

That's important because not only was it a breach of fiduciary duty by UCLA, according to French, it was also used by Enstrom's colleagues as one of the reasons they were giving him the boot.

As a faculty researcher, Enstrom must fund himself or he's out, unlike tenured faculty who are paid by the state.

Calls to UCLA's attorney, Allen Zuckerman, were not returned.

When Enstrom pointed out UCLA was responsible for his funding troubles, that reason for his firing was withdrawn, French said.

That started a sort of merry-go-round of justifications.

He was told he wasn't productive enough. In fact, he was as productive or more so than the tenured professors who were trying to fire him, so that reason was withdrawn.

Then he was told he'd misrepresented his title as a research professor. That's the title in UCLA's own promotional materials, so, again that reason was withdrawn.

Eventually he was told he was being canned because his work "doesn't align with the mission of the department." Also not true when you read the mission statement of the department.

But I think that's the closest to the truth if you substitute "mission of the department" with "group think of the other faculty."

They simply didn't like Enstrom's science.

Particularly a 2003 study he did that showed second hand cigarette smoke doesn't kill people. And his 2005 study looking at elderly Californians that showed no link between premature deaths and exposure to PM2.5.

And they certainly didn't like that he stepped into the political realm to call others out on their own questionable science and outright fraud.

It was Enstrom who blew the whistle on an CARB "scientist" who lied about having a Ph.D. And he exposed CARB Chair Mary Nichols who knew about the faked credentials but covered it up from other board members until after they voted on critical new truck exhaust rules.

Enstrom also uncovered information that UCLA colleague John Froines had been serving on the Scientific Review Panel (which determines what is or isn't a toxic air contaminant) illegally for more than 20 years.

Enstrom's former Department Chair Richard Jackson alluded to Enstrom's agitating when I spoke with him back in 2010, saying the faculty was troubled by Enstrom's presentation at a CARB symposium in February of that year.

At that symposium Enstrom challenged the thinking on air pollution and health effects, showing that even some studies relied on by CARB showed no link in California between PM2.5 and premature deaths. He noted that many studies, including his own, that have not found a correlation between pollution and premature deaths have been ignored or misquoted.

Enstrom basically embarrassed the air pollution cabal, French said.

"It was humiliating for CARB and UCLA," French said. "But rather than prove him wrong with their own science, they punished the whistleblower.

"If they're so confident he's wrong, then challenge his science."

Funny how that never seems to be an option.

*Opinions expressed in this column are those of Lois Henry, not The Bakersfield Californian. Her column appears Wednesdays and Sundays. Comment at <http://www.bakersfield.com>, call her at (661) 395-7373 or e-mail [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com)*

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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.

*Opinions expressed in this column are those of Lois Henry, not The Bakersfield Californian. Her column appears Wednesdays and Sundays. Comment at [www.bakersfield.com](http://www.bakersfield.com), call her at (661) 395-7373 or email [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com).*

## **Related PDFs**

- [Fuller letter to UCLA](#)
- [UCLA response to Fuller](#)
- [Resignation letter](#)

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<http://www.bakersfieldcalifornian.com/business/local/x196574834/LOIS-HENRY-Enforcing-smog-rules-this-way-is-bad-for-business>

## **The Bakersfield Californian    October 23, 2013**

Tuesday, Oct 22 2013 07:00 PM

### **[LOIS HENRY: Enforcing smog rules this way is bad for business](#)**



Californian columnist Lois Henry

***By LOIS HENRY, Californian columnist [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com)***

I've been saying for years, to no avail, that new rules requiring drastically reduced emissions from trucks, buses and heavy equipment were going to cost far more than they would ever benefit the public in terms of better health.

Now, those rules are coming home to roost.

As predicted, the costs are already staggering.

One local company was fined \$38,625 last April and another was recently fined \$230,250, both for, essentially, not filtering up fast enough to suit the California Air Resources Board (CARB).

That is a lot of money for any local company to try and absorb. Especially as they continue to lay out ever more cash to try and comply with these draconian CARB rules.

For background, CARB adopted new rules back in 2008 and 2009 requiring truckers and equipment operators to either scrap their vehicles if they are past a certain age or install expensive filters to reduce emissions, specifically PM2.5 emissions. PM2.5 is particulate matter, or tiny bits of soot and ash.

Companies had until 2012 or 2013, depending on fleet size and other factors, to comply.

I know, I know, you're thinking, hey, its rules like these that keep us from having to shut down entire cities because of pollution, as China recently did in the city of Harbin. (Google it, nasty stuff!)

Yes, rules forcing emission reductions have cleaned the air.

But for these particular rules, CARB strayed from its tried and true method of requiring lower emissions on new equipment, which becomes the norm through attrition. Instead, these rules affect nearly all existing trucks and heavy equipment. The rules have made some equipment uneconomical to operate and, in some cases, even to resell.

For companies that can, and have, begun retrofitting, they still have to deal with the specter of government regulators who want it done faster.

Or, in the case of Mountainside Disposal, which operates under Price Environmental Services, regulators actually got in the way of retrofitting.

Mountainside is a refuse hauling company located in Bakersfield that was fined \$38,000 for not installing filtration devices on one of its 60 trucks within CARB's timeframe.

But for the past several years, Mountainside has been installing the proper devices and sending reports to CARB with no response, said manager Ray Scott.

"They never responded so we thought we were in compliance," Scott said. "It's not like regulators came here and found numerous trucks without filters. There was one."

On top of that, he said, CARB regulators delayed approving some devices so that manufacturers could release them to Mountainside.

"In many ways, CARB held up the installation process," Scott said.

Scott personally went to Sacramento to point out how Mountainside had tried to comply with the new rules.

"We point blank showed them where CARB had made errors and they still fined us."

The company has so far, spent \$750,000 retrofitting its older trucks with top-of-the-line devices. That amount doesn't include installation and maintenance costs the company will also have to foot.

So, \$38,000 on top of all that (plus the year it took wrangling with CARB over the fine) was a bitter pill.

The other local company that was fined took an even bigger hit.

KS Industries (KSI), owned by Ken Small, was fined more than \$230,000 for not complying with the new filter rule on 49 of its vehicles, according to the settlement agreement with CARB.

The amount was arrived at through "confidential settlement communications," according to CARB.

KSI declined to comment.

Others in the trucking world are already taking note of the KSI fine.

"These companies like KSI have a huge problem because it will take them years to get into compliance buying new trucks and retrofitting their older trucks," said Lee Brown, spokesman for California Construction Trucking Association in an email. "We think that there are at least 700,000 heavy-duty trucks out of compliance come the end of 2014.

"Make no mistake, KSI is just one of thousands of businesses with diesel trucks that will be, or is, in this same predicament."

The fear, of course, is that some of those companies won't be able to keep up with costs and jobs will be lost.

I mentioned earlier that all this cost isn't actually buying us better health.

I've done numerous stories on studies showing that PM2.5 isn't killing Californians. And, in fact, a growing number of studies are showing PM2.5 has zero effect on premature deaths.

But even if you believed PM2.5 was pure cyanide, CARB's own estimates show we would be very near the 2023 goal for diesel PM2.5 without these rules. That's because old diesel equipment would be phased out naturally as operators bought new stuff.

In fact, we'd be within four or five tons per day of the 2023 goal. And that was based on old estimates done prior to the economic meltdown, which all but decimated the construction industry.

Like I said, these new CARB rules are inflicting way more economic pain on Californians than we will ever reap in public health.

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<http://www.bakersfieldcalifornian.com/local/grade/x350996680/LOIS-HENRY-UCLA-slams-the-door-on-public-access>

## **The Bakersfield Californian    January 15, 2014**

Tuesday, Jan 14 2014 06:22 PM

### **LOIS HENRY: UCLA slams the door on public access**



1.

Californian columnist Lois Henry

**By LOIS HENRY, Californian columnist [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com)**

Here's a fun way to deal with laws you don't like: make up a policy that says they don't apply to you.

That's essentially what UCLA did earlier this month in regard to the California Public Records Act.

Specifically, the university says faculty emails should not be subject to disclosure because the very thought that public eyes could scrutinize how their particular brand of sausage is made could cause a "chilling effect" on research and the free exchange of ideas and squelch faculty members' academic freedom.

The university came out with a statement of "guiding principles" that claims professors should have a right -- a right, mind you -- not to have anyone prying into their "scholarly communications."

You know, for a bunch of smarty pants, these folks can be pretty dim sometimes.

They work for the state. As such, employee communications are subject to the California Public Records Act.

The act lists a number of exemptions under which certain records may be withheld.

"Academic freedom" is not among them.

"If the Legislature had found that was a legitimate exemption, they had 50 years to design such an exemption and they did not," noted Jim Ewert, a First Amendment attorney for the California Newspaper Publisher's Association.

Not only that, no court has ever found that a public employee, in the scope their employment, can claim their communications are private, whether for academic freedom purposes or otherwise, he said.

That includes professors and researchers who work for the publicly funded University of California.

Even attorneys who felt there could be cases where academic freedom trumped public disclosure, said UCLA's policy was way too broad.

"It would allow them to withhold too many different kinds of records and communications," said Peter Scheer an attorney for the California First Amendment Coalition.

There is an "individual privacy" exemption in the act. But that is always based on very specific circumstances. The public agency must determine that releasing the information would not only invade an individual's privacy but that the information is also not of vital public interest.

It's known as a balancing test. There's no mention of any balancing in UCLA's new policy, noted Ewert.

"They just blow right past the public interest balancing test," Ewert said.

And how.

Accompanying UCLA's guiding principles on this issue, was a step-by-step letter outlining how professors should respond to records requests and explaining what is and isn't a public record.

In that letter, UCLA states that faculty communications may be exempt from disclosure "...because the public interests served by not disclosing the records clearly outweighs the public interest served by disclosure."

Wow.

The school downgrades the public's interest before even knowing what they heck someone might ask for.

UCLA officials refused to talk to me about the new policy, saying it speaks for itself.

\*\*\*

I know this all might seem theoretical and hard to see why you should care. So let me enlighten you.

This all comes on the heels of a fight I've been having with UCLA over one professor's emails.

John Froines, now retired, was a professor at UCLA in 2009 when the Department of Pesticide Regulation contracted with him to chair an independent panel to investigate the fumigant methyl iodide.

Arysta LifeSciences, methyl iodide's maker, requested emails between Froines and anti-pesticide activists during the time Froines was under contract to DPR to determine whether he was being unduly influenced by those groups.

UCLA gave up some, but not all, of Froines' emails.

Sure enough, in the emails that were released, there were lots to Froines from a variety of anti-pesticide groups mostly discussing politics and tactics the groups were employing against approval of methyl iodide. These were not "scholarly communications" regarding scientific ideas.

In fact, an email from Froines' assistant, Elinor Fanning, to the anti-pesticide groups says that Froines agrees with their actions: "But that we have to remain behind the scenes at the moment. John has to protect his position of chair of the review committee for the time being."

Hmm. Really makes you wonder what was in the emails UCLA refused to release (including Froines' sent emails.)

Arysta, which eventually pulled methyl iodide from the market, had some back and forth with UCLA trying to get the missing emails to no avail.

But it was interesting to read the legal team's variety of ridiculous excuses for keeping the information under wraps.

First, they said they asked Froines and he didn't have the emails, sorry. Then they said the emails were on the school's "back up tapes" and since those were only used for disaster recovery, they were no longer be public record. Then they claimed that if the emails were personal in nature, and not related to university business, they weren't public. Oh yeah, and that academic freedom thing, that too.

As an aside, I've found that when a public agency flails around with an ever changing array of legal defenses against public exposure, it typically means A) it doesn't have a legal leg to stand on and B) there's something someone doesn't want the public to see.

State Sen. Jean Fuller, R-Bakersfield, took notice of my fight with UCLA and she and Bob Huff, R-Diamond Bar, also tried to get UCLA to come clean on this. They got the same run around. Now Fuller is concentrating her efforts on the UC trustees.

She's vice chair of the rules committee, which confirms appointees, such as UC trustees.

"I'm very disappointed (UCLA) is not willing to follow the law," she said. "But my angle now is to question trustees on transparency and at least get them on the record."

It's funny how everyone is all for government transparency, in theory. Living with it is a different matter.

UCLA's attitude seems to be that forcing transparency on the school is unfair, and frankly quite a bother.

"...These requests have increasingly been used for political purposes or to intimidate faculty working on controversial issues. These onerous, politically motivated, or frivolous requests may inhibit the very communications that nourish excellence in research," reads the preamble to its new policy.

First Amendment Attorney Ewert thought just the opposite.

"It's transparency that gives even more integrity to their studies," he said.

Excellent point.

Or how about this one: The public has a right to know how its money is being spent.

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Read more

UCLA's how-to for faculty faced with a public records request:  
<https://www.apo.ucla.edu/resources/recordrequest>

UCLA's "guiding principles" regarding public records requests:  
<https://www.apo.ucla.edu/resources/academic-freedom>

<http://www.bakersfieldcalifornian.com/columnists/lois-henry/x1042364595/LOIS-HENRY-Science-behind-air-regs-more-sketchy-all-the-time>

# The Bakersfield Californian      April 23, 2014

Tuesday, Apr 22 2014 06:18 PM

## [LOIS HENRY: Science behind air regs more sketchy all the time](#)



1.

Californian columnist Lois Henry

### **By Lois Henry**

The more I learn about how certain air regulations were concocted, the more ludicrous it all seems. Tomorrow the California Air Resources Board will debate whether to extend the deadline for small trucking firms to comply with rules on PM2.5. (That's tiny bits of fine particulate matter contained in soot, dust and diesel exhaust.)

Truckers will be fighting truckers over table scraps.

What should happen is the whole silly rule should be chucked. And CARB should pay the poor saps who already retrofitted their rigs with filters that, by numerous reports, are a constant source of engine trouble. And I'm not even talking about the CARB-approved brand that caused a huge fire in Washington state a couple years ago and had to be recalled.

Seriously, when I think about how badly CARB has fumbled this entire rule (including fraud by one of its main scientists!), it's hard to get to my main point without going off on a tangent at every step.

OK, the main point is this: the federal EPA now admits it doesn't have the underlying data for studies it used back in the late 1990s to deem PM2.5 a killer.

Not only that, but admitted EPA con artist and thief John Beale was the driving force behind these air quality standards as a means to aggrandize himself and boost his salary. (More on him in a bit.)

I swear, you can't make this stuff up.

Follow along.

In the late 1990s the EPA, at the urging of Beale, set national ambient air quality standards (NAAQS) for ozone and PM2.5.

CARB, in turn, piggy backed on the EPA's zeal, deciding that diesel PM2.5 is a highly toxic subset of overall PM2.5. Hence the draconian "truck and bus" rule, which was birthed in 2008 and will be debated, again, tomorrow.

The start of it all, however, goes back to studies known as the Harvard "Six Cities" Study and American Cancer Society's "Cancer Prevention Study II."

Those studies used population data sets tracking where people lived, worked, their lifestyles and the manner of their deaths.

The studies found a weak correlation (please note: correlation does not equal cause) between exposure to PM2.5 and total mortality.

The studies were controversial even at the outset as miscalculations were discovered that drove the estimated deaths in one study down from 40,000 a year to 15,000, or, 1,000, per one researcher. And they relied on data primarily from the 1980s, which was a decade old.

Despite the many noted problems with the studies, EPA made a "policy call" to use the studies as the basis for its 1997 NAAQS, according to a report released last month by the minority staff (that means Republicans) of the Senate Committee on Environment and Public Works.

Interestingly, CARB chairwoman Mary Nichols was right in the mix in the EPA Office of Air and Radiation.

She testified to Congress that she deferred to her then deputy, Beale, on the merits of the "Six Cities" and "CPS II" studies as she "didn't have as much detailed knowledge" as Beale.

Fascinating.

In 2009, Nichols had to admit publicly that she knew another scientist in her employ had lied about his credentials as the lead author on a key health effects study used as the basis of the truck and bus rule. But she kept that information to herself while the CARB board voted in 2008 to approve the rule, because she "knew the science" behind the supposedly fatal effects of diesel PM2.5.

Now it turns out she may not have read the core studies that first proclaimed a connection between death and PM2.5. That, or she simply doesn't care what the science really says because she's more interested in a political agenda.

In any event, numerous researchers have been asking for the underlying data sets of the "Six Cities" and "CPS II" studies to see if the results could be reproduced.

With the exception of one Canadian research team headed by Daniel Krewski, no one has ever been granted a peek at the data behind the curtain.

In 2000, under the auspices of the Health Effects Institute, Krewski's team did a reanalysis of both studies using the original data and the exact same methodology as the original authors of these studies.

Surprise, he got the same results.

A true reanalysis should look at the data using several different methodologies to see if the results still hold up.

So, the quest for data continued with the EPA stonewalling the House Committee on Science, Space and Technology to the point the committee subpoenaed the data from EPA on Aug. 1, 2013.

The EPA finally admitted in March that it could not provide the committee the data required for a proper reanalysis.

Their quest for data at a standstill, several members of the committee launched H.R. 4012 to prohibit the EPA from ginning up regulations based on scientific information that isn't open to the public.

It's hard to fathom an argument against that approach. OK, so back to Beale.

This is the dude who claimed he was a spy for the CIA and missed 2-1/2 years at his job at the EPA over the last decade claiming he was on "missions." He was sentenced to 32 months in prison for defrauding the government out of nearly \$900,000 in unearned pay and bonuses.

Beale was hired at a high level with the EPA in 1987, despite having no legislative or environmental policy experience, by his best friend Robert Brenner, according to the Senate minority report.

The two bureaucrats, accountable to no one, pushed the air standards despite serious scientific uncertainties and warnings from economists that the rules would do more harm than good. Worse, it appears the buddies fudged numbers on purpose.

"EPA's analytic errors (were) not inadvertent," economists in the Office of Information and Regulatory Affairs wrote about the 1997 fracas over national air standards, according to the Senate minority report. "They were the result of efforts to convince the public that the rule was reasonable when the facts indicated otherwise."

And remember who Beale was working for at the time -- CARB's very own Nichols.

Rickety science pushed by unaccountable bureaucrats, secrecy, manipulation, fraud and outright lies.

That's quite a legacy Beale has left for us.

*Contact Californian columnist **Lois Henry** at (661) 395-7373 or [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com). Her work appears on Sundays and Wednesdays; the views expressed are her own.*

## **Related PDFs**

- [U.S. Senate Committee on Environment and Public Works Minority Staff Report](#)

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# The Bakersfield Californian      June 15, 2014

Saturday, Jun 14 2014 04:30 PM

## [LOIS HENRY: Study 'breath of fresh' air on asthma-air pollution link](#)



1.

Californian columnist Lois Henry

### **By Lois Henry**

I'm sure a recent study looking at asthma and fine particulate matter in the San Joaquin Valley will go over like a lead balloon for some.

What it found was even as fine particulate matter (tiny bits of dust and soot also called PM2.5) dropped significantly in the years 2008-2010, asthma-related ER visits went up.

What that means, as far as asthma goes, is air pollution isn't a major contributing factor.

It's well known that air pollution doesn't cause asthma, but the mantra has long been it's likely a trigger for asthma attacks.

Well, probably not, according to this study, commissioned by the San Joaquin Valley Air Pollution Control District and scheduled to be presented at the district's June 19 board meeting.

"It shows that, relative to other causes, air pollution doesn't even register" as a trigger for asthma attacks, said Seyed Sadredin, director of the air district.

The study also broke down the constituents that make up PM<sub>2.5</sub> to ferret out which bits do the most harm.

It found that to the minimal extent PM<sub>2.5</sub> does affect asthma, the main culprits are wood smoke and vehicle emissions. Ammonium nitrates had zero effect. That's important for dairy farmers, but we'll come back to that.

This study is an extension of a previous study released in 2011 that looked at asthma-related ER visits and PM<sub>2.5</sub> levels during the years 2005-2007.

That study did find a strong correlation between high PM<sub>2.5</sub> levels and hospital visits for asthma, particularly among children.

But in this latest study, the correlation shifted dramatically away from PM<sub>2.5</sub> levels, instead showing a strong association between asthma attacks and upper respiratory infections -- colds.

In a summary describing the study, the air district states this latest study is "a reminder of the complexity of factors and processes that shape public health outcomes in the San Joaquin Valley, particularly in respect to asthma."

Hmm.

No such caution was included in the previous study that did show a correlation between PM<sub>2.5</sub> and asthma ER visits.

Back then the study's findings were "important new regional evidence for the public health consequences of air pollution" and were loudly touted by activists as justification for ever more regulation.

Which is why I'm sure the new findings will be roundly booed by activists who get a lot of political mileage on the back of childhood asthma, something that pulls at all our heartstrings.

This study pours cold water on that emotional reaction.

"The other important finding was that ammonium nitrates, which are tied to dairy emissions, don't have any impact on asthma attacks," Sadredin said.

Fifty percent to 70 percent of PM<sub>2.5</sub> pollution in the valley is caused by ammonium nitrates, Sadredin said.

If you hate mega dairies, that's a big, fat slow moving target.

But if it turns out all that ammonium nitrate isn't actually hurting anyone, why bother with it?

Sadredin said the district will use the results of this study to lay the foundation for a more risk-based approach to cutting air pollution.

The air district has been pressing the EPA for some time to allow it to regulate for different constituents within air pollution rather than regulating based on mass.

"The Clean Air Act treats all species (constituents) the same," he said. Whether they're carcinogenic or inert, it doesn't matter.

"It's a shotgun approach."

He said in mature air districts like the valley, where we've been at emission reduction for many years and have, in fact, cut pollution by up to 80 percent, the EPA should allow a more surgical approach so regulators can concentrate on those pollutants that are most dangerous.

For instance, with ozone, which is made up of VOCs and NOx (volatile organic compounds and nitrogen oxides), our big problem is NOx.

In order to meet the EPA's new eight-hour rule for ozone, the air district has proposed allowing us extra credit for every ton of NOx we cut, rather than forcing equal cuts to VOC, which does nothing to improve public health.

Same thing with PM<sub>2.5</sub>.

"If asthma is the public health issue and ammonium nitrates don't contribute to the problem but wood smoke does, let us target that rather than engaging in a gazillion-dollar effort to go after nitrates," Sadredin said.

I ran the air district's study by another scientist in the air biz, Robert Phalen, a professor of medicine at UC Irvine and founder and co-director of the Air Pollution Health Effects Lab at Irvine.

"It's a breath of fresh air," he said, without a hint of irony.

Regulators need to better understand the pollutants they're trying to reduce. They need to analyze the public health risks of those reductions as well, he said.

"That's a fundamental problem we have with regulators worldwide," he said. "They look at something in isolation and try to drive the risk of that one factor to zero not realizing that in doing that, they may be causing more harm to public health."

Much like microbiologists have shown that being too clean can be bad for our health, he said, pollutant free air can have adverse effects as well.

For instance, if a person's respiratory tract is never challenged, particularly at a young age, it won't develop the defense mechanisms needed to survive, he explained.

Our air is exceptionally clean today compared with the past, Phalen noted.

At some point the question needs to be asked, "How clean is clean enough?"

I'm pretty sure that's a question no bureaucrat who makes a living off dreaming up more air regulations will ever answer.

Opinions expressed in this column are those of Lois Henry. Her column runs Wednesdays and Sundays. Comment at <http://www.bakersfield.com>, call her at 395-7373 or email [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com)

#### RELATED INFO

Air pollution study

You can read a summary of the study at the link below. The full study will be presented at the San Joaquin Valley Air Pollution Control District's board meeting June 19.

[http://www.valleyair.org/Board\\_meetings/GB/agenda\\_minutes/Agenda/2014/June/final/11.pdf](http://www.valleyair.org/Board_meetings/GB/agenda_minutes/Agenda/2014/June/final/11.pdf)

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<http://www.bakersfieldcalifornian.com/columnists/lois-henry/x912902361/LOIS-HENRY-Extreme-air-rules-based-on-untested-data>

# The Bakersfield Californian      March 1, 2015

Saturday, Feb 28 2015 04:00 PM

## LOIS HENRY: Unchecked science no basis for onerous air rules



Californian columnist Lois Henry

**By Lois Henry**

New ozone regulations being proposed by the federal EPA would essentially force us all into electric cars and we probably still wouldn't come into compliance.

Ho hum.

Kind of the same old story for the San Joaquin Valley, where we're never in compliance and we're constantly being told our "FILTHY AIR" is killing us all.

No, our air isn't killing us. But that's another rant for another time.

The more important issue is that these rules, which even the local air district has said would force the suspension of all internal combustion, are based on health study conclusions that no one can check.

Repeat: studies that claim ozone at ever smaller levels is debilitating and even deadly are not checked to see if the results can be replicated.

So, when EPA officials bleat about how these rules are needed to save countless lives, my response is "prove it."

I've written about the problem of using unverified studies to gin up regulations for years as that's the standard MO of the California Air Resources Board (CARB).

We're seeing it again with these proposed EPA rules, which would be incredibly far-reaching.

The proposed regulations would take the ozone standard to between 65 and 70 parts per billion. And the EPA is taking comments on possible future regulations that would lower the standard even more, to 50 parts per billion.

We are just barely meeting the 1997 standard of 84 parts per billion and haven't come anywhere near the current 75 parts per billion standard, which was set in 2008. Neither has the rest of the country, which is a major argument against the proposed rules.

"The full extent of the 2008 regulations aren't known yet," said Anne Kolton, communications vice president for the American Chemistry Council, an industry trade group. "Most places in the country haven't even implemented that standard yet."

That's because the EPA didn't issue implementation guidance on the standard until this past December.

"These new rules would add a whole new level of cost, complexity and uncertainty" that could stymie the economy, she said.

The American Lung Association, which supports the new rules, pooh poohed such talk of disaster, saying industry has cried calamity for nearly 40 years since air regulations began and, still, business continues.

Kolton countered that these new rules would be a game changer.

If a region has too much ozone -- and we do -- you can't open new businesses or expand businesses if they would emit any ozone. Since most goods- and manufacturing-based businesses involve ozone in one way or another, that could put a chokehold on economic growth.

Don't own a factory? You're still not off the hook. Cars are major ozone emitters. The EPA's proposed rules could result in individuals being told how much they can drive. Or how about a per mile fee?

All of which people may be willing to do if it truly saved lives.

Problem is, no one knows for sure. And there's a lot of evidence no one's dying at all, but you can't check.

To that end, H.R. 1030 (known as the secret science reform act) was approved by committee and sent to the House floor on Feb. 25. That bill would prohibit EPA from promulgating rules using studies that rely on data that can't be replicated by other researchers. That means the underlying data has to be publicly available.

Some data sets used in air pollution studies are held by public and private universities.

But, by far, the largest and most important data sets covering 2.5 million Americans for generations are owned by the private American Cancer Society. It has collected reams of information on people who voluntarily enroll in its various studies, supposedly devoted to cancer prevention. The studies record names, addresses, social security numbers, ages, habits, occupations, family histories and much more.

It was these data sets that the first health studies used to look at how air pollution affects health on a large scale. The EPA, in turn, used those studies to set the first ozone and particulate matter (PM2.5) standards.

From 2011 through 2013, members of the House Committee on Science, Space and Technology asked to see the underlying data of those decades-old studies. They were rebuffed and eventually issued a subpoena in August 2013 to the EPA for American Cancer Society data.

The EPA complied as far as it could, but it couldn't tell the American Cancer Society what to do. And the American Cancer Society was in no mood.

Suffice to say House members didn't get the data.

The main objection to that subpoena, and the loudest criticism against H.R. 1030, has been that making such data sets public could be a terrible invasion of privacy for those people who enrolled in health studies thinking their information would be protected. No one wants that to happen. But considering these data sets have been routinely used by a number of researchers without negative consequences, I think that argument is a red herring.

In fact, the American Cancer Society has gone so far as to give at least one researcher individual addresses (which it said it would never do when the subjects were enrolled), for a 2011 CARB report by Michael Jerrett on air pollution and mortality in California. No identity theft reported so far.

I wrote to American Cancer Society Vice President for Epidemiology Susan Gapstur back in 2013 and again earlier this year to ask why the cancer society wouldn't release data to Congress with its usual strict privacy protections. And, I wanted to know, why had it provided Jerrett with addresses, something that appears against cancer society rules?

I never heard back from her. A public information officer for the cancer society contacted me in late January asking what I wanted to know. I repeated my questions. But, again, never heard anything back.

No matter, I think objections to this bill, H.R. 1030, fall flat.

If personal privacy can be protected for certain researchers, it can be protected for other researchers to replicate these studies' results.

Since it's the public that has to live with rules based on studies using this data, I, for one, would like to have it checked.

*Opinions expressed in this column are those of Lois Henry. Her column runs Wednesdays and Sundays. Comment at <http://www.bakersfield.com>, call her at (559) 395-7373 or email [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com).*

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## Viewpoints

# UCLA's immense power couldn't squash this 'David'

**Lois Henry**

**T**he reality of our world is that sometimes David slays Goliath and sometimes he has to settle for giving the big Phillistine a black eye.

Such is life when dealing with giants who have all the money and all the power.

In this case, longtime researcher James Enstrom last week agreed to settle his lawsuit against UCLA alleging retaliation for his academic and political views on air pollution. He settled for \$140,000, a reversal of his termination and access to school resources.

It's not the full vindication I believe he was due, but Enstrom was up against a monster and he knew it.

"I feel like I made it through a brutal process that most people would have no way to counter when dealing with an entity this powerful," he said.

The fact that UCLA agreed to rescind his termination so that he is now a "retired researcher" and agreed to allow him to accept another position at the school, if offered, is really the key part of this settlement.

Being fired destroyed Enstrom's credibility among many in the scientific community. Having his standing restored is huge for him to continue working.

The small monetary award, though, will no doubt cause some to think the suit was frivolous.

On cue, the school's media contact, Phil Hampton, sent

me an email saying the university did nothing wrong and the settlement was "far less than the legal costs of a trial."

Of course, Hampton fails to mention UCLA's attempts to have the case thrown out in 2013 were slapped down by a federal district judge who wrote that Enstrom's allegations had more than enough significance to move forward.

If you're wondering what all this has to do with you, remember that unless your fireplace is *registered with the government*, you have to get permission before lighting up on a cold December night. And that's just the tip of the air pollution regulatory iceberg in California.

All those regulations that govern power plants, construction, dairies, trucks, and possibly whether you can continue driving a car with an internal combustion engine, are based on studies that claim air pollution is killing us.

Enstrom's work, however, found air pollution is not killing us.

His work, and similar studies that found no death effect, was routinely ignored or misquoted by the California Air Resources Board, the grand pooh bah of regulation-making in this state.

To make those regulations, CARB needs studies showing the ill effects of air pollution, which it funds through lucrative grants to universities such as UCLA. Convenient, no?

Beginning in 2006, Enstrom began agitating to have his, and others', work properly included in CARB's

**Being fired destroyed Enstrom's credibility among many in the scientific community. Having his standing restored is huge for him to continue working.**

reports.

Then in 2008 he blew the whistle on a lead CARB researcher who lied about having a PhD from UC Davis and revealed CARB chairwoman Mary Nichols knew about the deception but didn't tell her fellow board members until after a key vote on new trucking regulations.

He also pulled the plug on the 30-year — and illegal, as it turns out — tenure of fellow UCLA professor John Froines as chairman of the Scientific Review Panel, a key group that works with CARB.

Coincidentally, Froines was a member of the UCLA department that voted to let Enstrom go.

Around the time Enstrom was most vocal about problems at CARB, 2010, is when UCLA claimed Enstrom had problems with his funding and began the process of trying to fire him.

As a non-tenured researcher since 1976, Enstrom sought grants and other awards

to fund his salary and studies. UCLA administered the money for a fee.

He had about \$280,000 in his accounts in 2008, but most of that money disappeared, said his attorney, David French of the American Center for Law and Justice, a conservative civil rights group that represented Enstrom at no charge.

Since UCLA was in charge of the money, not Enstrom, it had to dig around for other reasons to fire him. Most were easily disputed or withdrawn.

Enstrom played by the university's rules and produced good science that was attacked but never debunked.

To me, it's clear UCLA just wanted to shut him up.

It's galling UCLA was able to drag Enstrom through the mud for the last five years without greater consequences. Something it's still dabbling in, by the way.

In his email to me, Hampton wrote that Enstrom's 30-plus years at UCLA proves the university supports academic freedom.

"Enstrom's presence as a researcher for decades, despite his minority positions defending diesel emissions and tobacco, demonstrates that fact."

See what he did? Enstrom never defended diesel emissions and tobacco. He defended proper science.

"Higher learning," indeed.

Contact Californian columnist Lois Henry at 395-7373 or [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com). Her work appears on *Sundays and Wednesdays*; the views expressed are her own.



<http://www.bakersfield.com/Columnists/2015/10/31/LOIS-HENRY-New-ozone-rule-more-hot-air-from-the-EPA.html>

## **The Bakersfield Californian      November 1, 2015**

### **LOIS HENRY: New ozone rule more hot air from the EPA**

By lhenry@bakersfield.com  
Saturday, Oct 31, 2015 5:00 PM

With the Benghazi hearing sucking up everyone's attention Oct. 22, I'm betting you missed the House Science, Space and Technology Committee's hearing the same day on the new ozone standard set by the EPA earlier this month.

Which is shocking because, of the two issues, the new ozone standard will definitely have a bigger impact on your personal world than whether Hillary lied about why our Libyan embassy was attacked. (Discuss on your own time.)

So let me recap and, of course, throw in my two cents.

On Oct. 1, the EPA lowered the national ambient air quality standard for ozone to 70 parts per billion (ppb) for an 8-hour average. The deadline for attainment will likely be 2037.

The San Joaquin Valley already can't meet the previous two standards of 75 ppb (deadline 2032) and 84 ppb (deadline 2024). We finally did meet the even older standard of 124 ppb in 2013. But the EPA hasn't recognized that achievement because a monitor in Arvin was moved, which is a whole other story.

Anyhow, the valley's ozone level is pegged at 93 ppb, by the EPA using a convoluted and somewhat unfair methodology.

So, we have 22 years to drop our ozone by 23 parts per billion. Simple, right? No.

In fact, Seyed Sadredin, director the San Joaquin Valley Air Pollution Control District, has said repeatedly and told Congress on Oct. 22 that even if we stopped all fossil fuel combustion we still wouldn't hit 70 ppb.

Even so, his goal before the committee wasn't to ask that the standard be relaxed.

Sadredin wants the Clean Air Act amended to acknowledge a few realities that have emerged over the last 30 years we've been working on air pollution.

- Synchronize standards so they don't overlap. We have six attainment plans for six different standards right now with four more in the works and, yes, all have duplicative requirements.

- Different pollutants should be given different weight. For instance, we've learned locally that VOCs, volatile organic compounds, aren't as big of a health threat as NOx, nitrogen oxide. Why regulate for them the same?
- If you're already an "extreme nonattainment area," which we are, the EPA shouldn't require a "contingency" plan. Every emission that can be cut has been. There are no contingency emission cuts to be had.
- Instead of arbitrary deadlines, require the air district to prove every five years that it's done everything economically and technologically feasible to achieve EPA standards.
- Clarify rules around vehicle-related emissions due to population growth in nonattainment areas by allowing states to take credit for emission reductions due to vehicle turnover and improved tailpipe controls.

He didn't even get into the fact that the EPA doesn't account for China's ozone, which adds 5 to 20 ppb to the valley's overall level. But I'll let that one go for now.

The air district's tweaks are reasonable and would go a long way to making sure we're still pushing forward without being unfairly fined and sanctioned into oblivion. I hear Rep. David Valadao, R-Hanford, is considering introducing legislation to make the changes this year.

Good.

It's a start, but we still need a lot more rational thinking on this issue. While Sadredin wasn't interested in arguing whether ozone is truly the health bogeyman it's made out to be, I am.

First, air pollution, including ozone, doesn't cause asthma.

Repeat: asthma is not caused by air pollution.

I wish public agencies and activist groups could be sued every time they spit out that particular bit of misinformation.

Air pollution can exacerbate asthma symptoms, but it's not the root cause.

Here's another inconvenient truth: none of us is sucking in 93 ppb of ozone with every breath.

That figure is based on the fourth highest consecutive reading from the valley's worst air monitor. (One monitor in 25,000 square miles, by the way.)

Personal ozone exposure is much lower because most of us aren't outdoors all day.

In fact, a 2000 study on exactly that subject in San Bernardino County found school kids had, on average, personal ozone exposures of 18.8 ppb in Upland and 25.4 ppb in the mountain towns

during the height of ozone season. San Bernardino County's ambient ozone level is pegged at 102 ppb by the EPA.

We should know what the average personal exposure is region by region and study those health effects to see if there's a need to reduce ozone any further.

Otherwise, it seems, we're just regulating for the fun of it.

Don't be fooled by EPA Director Gina McCarthy's talk about how the new rule is a "science-backed" way to protect health.

The 2009 Edward Schelegle study the EPA relied on, which McCarthy mentioned in her announcement of the new rule, took 31 young adults at UC Davis and had them do vigorous exercise in 50-minute intervals for 6.6 hours in chambers filled with various levels of ozone.

Researchers found slightly reduced lung function at 72 ppb of ozone.

How ridiculous.

The general public isn't exposed to that level of ozone for that long under those conditions. And yet, we all have to adhere to this new rule.

"The problem is, (the EPA scientists) are very deep on very narrow issues," said Dr. Mike Honeycutt, director of the toxicology division of the Texas Commission on Environmental Quality, who also testified before Congress Oct. 22. "This process needs a number of experts, pulling together data streams. They need a risk assessor."

Even the EPA can't say whether the new ozone standard will cause any real decrease in asthma attacks, he said. And while the EPA also tries to pin premature mortality on ozone, no studies show actual causality.

In fact, if you're looking for ways to improve your life expectancy, you're far better off boosting your income than worrying about ozone.

Honeycutt sent me a chart showing the possible effect of a variety of lifestyle changes on premature mortality.

If you're in a lower income bracket and your paycheck drops by 10 percent, your risk of dying early increases by 35 percent.

Comparatively, a 10 ppb increase in ozone might increase your risk of early death by less than 1 percent.

As I said, a lot more rational thinking needed here.

*Opinions expressed in this column are those of Lois Henry. Her column runs Wednesdays and Sundays. Comment at <http://www.bakersfield.com>, call her at (661) 395-7373 or email [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com).*

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## The Bakersfield Californian      April 13, 2016

### [LOIS HENRY: Time to take the chaos out of air quality](#)

By lhenry@bakersfield.com

Tuesday, Apr 12, 2016 5:15 PM — updated 7 hours ago

If you want to glimpse a small bit of rational thought occurring in Congress, tune in to the Energy and Commerce Committee at 7:15 a.m. our time Thursday for a hearing on H.R. 4775, which aims to tweak the Clean Air Act.

Why would you want to be alert that early for something as un-scintillating as a congressional hearing on the Clean Air Act?

Well, air quality is a major deciding factor in whether businesses can locate, expand or even continue operating in the San Joaquin Valley.

And we all breathe...so there's that.

Anyhow, since the Clean Air Act was created in the 1970s, our air has vastly improved.

Yes, even here.

Over the past generation or so, air pollution in the valley has been cut by more than 80 percent even as we've continued to grow, according to the San Joaquin Valley Air Pollution Control District.

The Clean Air Act has been the catalyst for that success.

So any tweaking, such as proposed in H.R. 4775, will likely be seen by opponents as an attempt to gut the Act.

Not so.

This bill is very narrowly focused on the bureaucracy of the Clean Air Act, which has led to some unforeseen consequences.

For instance, a provision that ambient air quality standards be reviewed every five years using the latest scientific methods has come to be interpreted as a requirement that new, stricter standards be set every five years.

New standards are set regardless of whether old standards have been achieved. Then the standards run concurrently rather than the old being rolled into the new.

The result is that areas of extreme non-attainment, such as the San Joaquin Valley, have to implement and manage several different standards for the same pollutants.

That kind of multiple overlap is confusing and costly.

H.R. 4775 would synchronize standards, eliminating overlap.

“It does nothing to roll back or stop our progress,” said Seyed Sadredin, head of the San Joaquin Valley Air Pollution Control District, which supports H.R. 4775. “It would simply stop the chaos we’re operating under now.”

Sadredin will testify before the committee on Thursday.

Other provisions in H.R. 4775, co-sponsored by House Majority Leader Kevin McCarthy, R-Bakersfield, include extending the time between air quality reviews from five years to 10 in order to give air districts time to comply with standards.

It would also require the EPA take into consideration whether a new standard is economically or even technologically feasible.

For instance, the EPA recently set the national ambient air quality standard for ozone at 70 parts per billion (ppb) for an 8-hour average. We have 21 years to comply.

(For those keeping track, we haven’t yet met the two previous standards of 75 ppb, deadline 2032, and 84 ppb, deadline 2024.)

Sadredin has said repeatedly that for the valley to get close to 70 ppb, we would have to cease all fossil fuel combustion here.

At some point in the future, technology may make it possible for us to squeeze out more ozone from the atmosphere, but that technology isn’t here yet.

H.R. 4775 would allow the Clean Air Act to set its standards, but with a proviso that the deadline is pegged to technology that can make it happen.

It wouldn’t let anyone off the hook.

There are several more tweaks in the bill.

But to me, one of its key provisions is that it would require the EPA to study and report on “foreign sources of air pollution” coming from outside the United States and determine how those sources affect different air basins and their ability to comply with the EPA’s deadlines.

Of course, in the valley, we've long known that we're held accountable for some of the Bay Area's pollution thanks to prevailing winds.

But we're learning more and more just how much of China's pollution we're also paying the freight for.

It's only right that that pollution be accounted for and taken off our tab.

Because I highly doubt the Chinese are gonna give a rip if they get a citation from the San Joaquin Valley Air Pollution Control District for lighting up on a "no-burn night."

*Opinions expressed in this column are those of Lois Henry. Her column runs Wednesdays and Sundays. Comment at <http://www.bakersfield.com>, call her at 395-7373 or email [lhenry@bakersfield.com](mailto:lhenry@bakersfield.com).*

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## Related Info

### How to watch

The hearing on [H.R. 4775](#) before the House Energy and Commerce Committee starts at 10:15 a.m. eastern time (that's 7:15 a.m. our time).

The hearing webcast will be available at <http://energycommerce.house.gov>, according to the Energy and Commerce Committee website.

## Linked Articles

- [\*\*LOIS HENRY: New ozone rule more hot air from the EPA\*\*](#)

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## ‘Unpopular’ science plays a vital role in getting at the truth



**LOIS HENRY**  
THE CALIFORNIAN

**I**s PM2.5 killing people, or not? It seems like a basic scientific question.

Yet, as a recently published study shows, the science is anything but settled.

Despite significant questions in this new paper, which echo a growing number of other studies published in recent years, there is almost zero discussion in the scientific and regulatory

### INSIDE

Opposing view: Particulate air pollution is killing humans. **Page A3**

communities of whether PM2.5 is truly a killer.

The silence is oddly deafening. Yes, it involves complex scientific information. But you need to pay at-

tention to the details because it affects you in very direct ways.

Regulations mandating reduction of PM2.5 (tiny particulate matter in soot, dust and exhaust) are what keep people from lighting fires on cold winter nights here in the San Joaquin Valley, which is nowhere near compliance with national standards and has some of the most restrictive rules on PM2.5.

More important than cold, empty

fireplaces, PM2.5 regs cost us a lot of money, every single day.

That's because all long-haul trucks, tractors, bulldozers, etc., in California made before 2014 are required to be retrofitted with expensive filters and/or replaced, driving up costs for consumers on just about everything we use, eat or wear.

Please see **HENRY | A3**



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Those regulations are justified on a public health basis by the claim that PM2.5 causes thousands of "premature deaths" every year in California and nationwide.

That idea was born in 1995 after a major study authored by C. Arden Pope found an association between exposure to PM2.5 and premature deaths.

## INTO THE WEEDS

Here's what "association" means in this context.

This was a very large epidemiological study that looked at data on more than 500,000 Americans enrolled by the American Cancer Society in 1982 and followed for death through 1989.

Pope combined each subject's lifestyle data with their estimated PM2.5 exposure level based on their address in 1982.

He then did a statistical analysis to estimate the contribution of PM2.5 to their deaths through 1989.

Pope compared that data, which included the subjects' lifestyles, ages, address and deaths, to exposure levels of PM2.5 and created a statistical analysis of whether PM2.5 may have played a role in their deaths.

The role PM2.5 may have played is labeled as the "relative risk" in this and other studies.

In that seminal Pope study, the relative risk was found to be 1.07, meaning for every 10-unit increase in PM2.5 exposure, you have a 7 percent greater risk of dying early.

## STUDY QUESTIONED

The 1995 American Cancer Society study by C. Arden Pope created a huge outcry at the time with many scientists questioning its conclusions.

That didn't stop the Environmental Protection Agency from creating a national ambient air quality standard for PM2.5 in 1997, based primarily on Pope's work.

## OPPOSING VIEW

# Particulate pollution is killing humans

The hazard of air pollution was evident in the 4,000 excess deaths reported from the Great Smog of 1952 in London. However, measuring the cumulative health burden of living with chronically high air pollution is more difficult.

Findings from large prospective cohort studies in the U.S., Canada, and Europe have consistently shown that fine particle and, to a lesser extent, ozone air pollution are associated with increased mortality. Based on this evidence and air pollution monitoring in the

## DOUGLAS DOCKERY & JOHN EVANS

United Kingdom, the Committee on the Medical Effects of Air Pollutants estimated that loss-of-life expectancy equivalent to 29,000 deaths was attributable to fine particles in 2008.

In the current issue of *The Lancet*, Aaron Cohen and colleagues used global population-weighted mean concentrations of particle mass with aerodynamic diameter less than 2.5 micrometers (PM2.5) and ozone and integrated exposure-response functions to estimate the relative risk of mortality from ischaemic heart disease, stroke, chronic obstructive pulmonary disease, lung cancer and lower respiratory infections.

Their article, "Estimates and 25-year trends of the global burden of disease attributable to ambient air pollution: an analysis of data from the Global Burden of Diseases Study 2015," reports that 4.2 million deaths globally were attributable to fine particles and an additional 254,000 to surface ozone in 2015.

Cohen and colleagues report that China and India, with the largest populations and commensurately high levels of pollution, had the largest estimated numbers of deaths attributable to air pollution: 1.11 million and 1.09 million, respectively, in 2015. Similar numbers have been estimated previously. Although the numbers of deaths are not as large as in China and India, the proportions of deaths attributable to air pollution were similarly high in neighboring countries on the Indian subcontinent.

Moreover, Cohen and colleagues estimate

that the highest mortality rates attributable to fine particles were in countries in Central Asia, where air pollution has not been measured. Advances in remote sensing by satellites and air pollution modeling permit estimates of fine particle air pollution.

When coupled with the geographical distribution of the population, these methods can produce reliable estimates of exposure to fine particles. Therefore, estimation of the disease burden of air pollution is feasible in countries or even cities with few or no direct measurements of air pollution.

Such estimations also require extrapolation of epidemiological evidence from developed countries to the higher air pollution exposures in the developing world. Borrowing information from studies of analogous fine particle exposures to household air pollution, second-hand smoke, and active smoking provides a framework for extrapolation that is internally consistent across a range of inhaled doses.

The nonlinear shape of the integrated exposure-response function used by Cohen and colleagues means that the smallest benefits from incremental reductions in pollution would be expected in the most polluted countries. Because of the profound implications for air pollution control, this hypothesis needs to be tested in mortality studies and, wherever possible, by assessing the health benefits of interventions to reduce pollution in highly polluted communities. Until the results of such studies become available, the uncertainty in the shape and marginal slopes of the integrated exposure-response function (especially at high concentrations) must be fully acknowledged and, to the extent possible, quantified.

Cohen and colleagues also estimate high rates of deaths attributable to particulate air pollution in Egypt, Iraq, Libya, United Arab Emirates and Yemen. Fine particle pollution in these arid countries includes substantial fractions of resuspended crustal material. Assuming all fine particles have the same toxicity, the estimates of the effect of air pollution on mortality are quite large.

The evidence from developed countries has not yet identified a specific component of fine

particles to be responsible for the reported mortality effects; therefore, this assumption needs to be tested in countries with particle characteristics that differ from those in developed countries. Again, until the results of such studies become available, the uncertainty in estimates due to the assumption of equal toxicity must be acknowledged and quantified.

Tallying counts of deaths attributable to air pollution on a national scale identifies the health problem, but does not pinpoint the sources of pollution. The chemical transformations that produce ozone and a major portion of the fine particle mix are complex, and the populations exposed are often far downwind of the pollution sources. Calling attention to the tens of thousands or hundreds of thousands of deaths attributable to air pollution each year in developing countries is not sufficient. We in the public health community must provide the methods to identify the pathways of exposure and the approaches to reduce those exposures. The challenge falls to risk assessors, atmospheric chemists and meteorologists to provide the methods to back-calculate the sources of fine particles and ozone air pollution, even in the parts of the world with few data.

Furthermore, we must be honest about the strengths and weaknesses of the estimates we make from even the best methods now available. Scientists will need time to resolve these uncertainties. However, decision-makers must resist the temptation to wait for perfect information before they act, because the costs in loss of life to be expected while waiting will be substantial. Providing the capacity to reduce air pollution in each part of the world will have immediate, local health benefits. To the extent that these actions reduce emissions of carbon dioxide and other greenhouse gases, the long-term health risks associated with global climate disruption will be ameliorated in the entire global population.

*Douglas W. Dockery and John S. Evans are with the Department of Environmental Health at Harvard University's T.H. Chan School of Public Health in Boston.*

The annual standard back then was set at 15 micrograms per cubic meter. The current annual standard is 12 micrograms per cubic meter.

The San Joaquin Valley has yet to meet the 1997 standard and has virtually no hope of hitting the new standard by the 2025 deadline, by the way.

Between then and now, a number of studies have come out showing no association between PM2.5 and premature deaths.

These other studies are not based on the "gold standard" American Cancer Society data, however.

And they are routinely discounted by the EPA and the California Air Resources Board, or CARB, when the latest scientific information is evaluated for proposed new regulations.

**BLACK SHEEP**

The latest study, published in the journal Dose-Response last month by James Enstrom, did use the American Cancer Society data.

For anyone who's followed air pollution science for any length of time, the name "Enstrom" will likely elicit a response.

Enstrom has been arguing the merits of Pope's and other researchers' PM2.5 findings for the better part of 15 years.

It was Enstrom who discovered a CARB researcher who helped propagate those truck rules I mentioned earlier had lied about his Ph.D. credentials and CARB staffers knew about the deception.

It wasn't long after that when UCLA attempted to fire Enstrom from his longtime research position with the Environmental Health Sciences Department.

In termination letter, he was

informed "your research is not aligned with the academic mission of the Department."

Enstrom sued.

As part of the 2012 settlement, UCLA rescinded Enstrom's termination, paid him \$140,000 and allowed him access to school resources, which he still has.

What I've learned over the years of covering Enstrom and this topic is that while Enstrom's views may be unpopular, no one has been able to throw shade on his actual work.

I find that telling.

In his latest paper, Enstrom uses the American Cancer Society human data — which he won't say how he obtained (which is bound to be a big deal, see sidebar at right) — to recreate Pope's 1995 study.

He shows that you can get a relative risk similar to Pope's or you can get no relative risk.

It all depends on which PM2.5 exposure data you use and the best available PM2.5 data yields no relative risk.

Of particular interest, Enstrom found when he separated the Ohio Valley area from the rest of the country, there's no significant effect in either area no matter which PM2.5 data he used.

That kind of sensitivity brings the whole idea of PM2.5 as a killer into question.

**SILENCE ISN'T AN ANSWER**

Since Enstrom's paper directly calls out Pope and his findings, I called him up.

Pope would only say that he knows Enstrom to be a very bright scientist, that he takes the questions in Enstrom's paper seriously and would be reading it closely and

**SECRET DATA**

**Epidemiologist James Enstrom and other scientists who object to studies that have shown associations between PM2.5 exposure and early death have long complained that the data used in those studies has been kept under wraps.**

Findings must be independently replicated, opposition researchers have said.

The Health Effects Institute did hire researchers to do a reanalysis in 2000 on the 1995 study that spawned the PM2.5 regulations.

But many have argued those researchers simply used the exact same data and methodologies so it wasn't a true replication.

If a finding is true, they have said, it should come up the same no matter how data is reviewed.

The argument rose to the level of Congress back in 2013.

The Committee on Science, Space and Technology actually issued a subpoena to the EPA trying to get the data that was used for the 1995 study.

But the EPA doesn't own that data.

It belongs to the American Cancer Society, a private nonprofit that did not have to turn over the information.

That prompted a bill called the Honest Act, which would require full data disclosure for any study used by government agencies to enact regulations.

That bill passed the House but has yet to be heard in the Senate.

Meanwhile, Enstrom was able to obtain the original American Cancer Society data that he used to show no association between PM2.5 exposure and premature death in a paper published in March.

But he is shielding the source of that data, which has brought criticism of his paper.

Enstrom said, to date, the American Cancer Society has not contacted him about his use of the data.

writing up a response.

"Hey, this is what science is about," he said. "We need people to be skeptical and pick apart our work. It forces us to be more rigorous."

That's a refreshing attitude and one I hope is catching.

Unfortunately, up to now researchers who've been vocal in questioning PM2.5's effects have been essentially blackballed, as I've been told.

Regulators ignore their studies.

They can't get funding from EPA, CARB or the Health Effects Institute, the main funding sources for air pollution research (itself a conflict of interest). And essentially all have been turned down by the American Cancer Society for access to that human data used by Pope.

Even so, studies have been coming out showing virtually no effect from PM2.5, particularly in the western United States.

Even one study in 2016 by George Thurston, which purported

to show an effect, actually has a relative risk of dying early from PM2.5 exposure of 1.02 for California. When you add the margin of error to that figure, it's basically a nonrisk.

**DON'T FORGET THE LIVING**

"Air pollution does kill people," another longtime researcher, Fred Lipfert, told me, citing the terrible London smog that killed hundreds of people in 1952. "But we don't know who it will kill or why."

And these large epidemiological studies don't get at those questions because there's no way to say what an individual's actual PM2.5 exposure is over time.

Aside from that, he said, PM2.5 isn't a pollutant.

"It's a regulatory construct," he said. "It includes everything of a certain size, which includes all kinds of stuff. Some toxic, some not."

Science should focus on what people are actually exposed to instead of these mass studies where exposure levels are so variable.

"I think Enstrom's paper cracked the door on that issue," he said. "We need more science on this issue and perhaps a recognition that regulation is not the end all, be all."

Because, he said, while air pollution studies focus on deaths, "It's the living population that pays the bill for all these regulations."

As one of those people, I'd like to at least see an open, honest conversation about this among scientists and regulators.

*Contact Californian columnist Lois Henry at 395-7373 or lhenry@bakersfield.com. Her work appears on Sundays and Wednesdays; the views expressed are her own.*