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March 11, 2009

Chancellor Gene Block
University of California, Los Angeles
2147 Murphy Hall
Los Angeles, CA 90095-1405

Re: Alleged Unethical Conduct by Two UCLA Professors

Dear Chancellor Block:

I am the owner and manager of Delta Construction Company, Inc. for the past 44 years. The construction industry, an essential part of the California economy, depends to a large extent on the use of diesel powered vehicles and equipment. Our industry in general and my business in particular has been severely impacted by the stringent and costly portable, off-road and on-road diesel emissions regulations that the California Air Resources Board (CARB) has approved since 2004. I have outlined this impact in my attached November 25, 2008 letter to Governor Arnold Schwarzenegger.

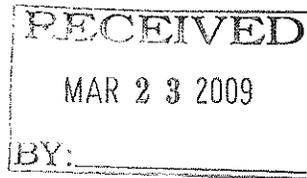
Because of the severe impact of these regulations, several knowledgeable individuals and I have independently assessed the scientific and legal procedures used by CARB to establish them. Based on this assessment, I believe that there is extensive strong evidence that two senior UCLA professors have deliberately and repeatedly violated the letter and the spirit of the *University of California Standards of Ethical Conduct* and the *California Health and Safety Code*.

Thus, I request a meeting with you in order to determine if this evidence is appropriate and sufficient for the filing of formal allegations of unethical conduct by these two UCLA professors. The general nature of this evidence involves gross misrepresentation of scientific results in the research record, failure to follow proper legal requirements for establishing California regulations, and blatant disregard of legitimate concerns regarding the scientific and economic aspects of California regulations. I am prepared to present the complete evidence during our meeting or in another appropriate forum.

Thank you very much for your consideration regarding this matter, which is extremely important me and many other impacted California businessmen, who are struggling to survive in the current troubled economy.

Sincerely yours,

Norman R. "Skip" Brown
President



ADMINISTRATIVE POLICIES & COMPLIANCE
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March 17, 2009

PERSONAL & CONFIDENTIAL

Norman R. Brown
Delta Construction Co., Inc.
P.O. Box 277517
Sacramento, CA 95827

Re: Your March 11th Letter to Chancellor Block

Dear Mr. Brown:

Your letter to UCLA Chancellor Gene Block, dated March 11, 2009, was forwarded to me as the campus official responsible for coordinating responses to reports of suspected improper governmental activity involving UCLA employees. This will inform you that we will need more specific information about your concerns before we can proceed.

In your letter you refer to the severe impacts to your business caused by regulations approved by the California Air Resources Board (CARB) and imply that two UCLA professors are connected to the adoption of these regulations. You allege gross misrepresentation of research results and further state that the two professors have violated the University's Standards of Ethical Conduct and the California Health & Safety Code. However, your letter does not identify the professors or the research in question, and does not otherwise specify the ethical or Health & Safety Code violations.

UCLA takes allegations of scientific misconduct very seriously. UCLA Policy 993 (enclosed) sets out our internal procedures for evaluating allegations of research misconduct, which is defined as the fabrication, falsification, or plagiarism of research data. However, we cannot conduct an initial assessment as called for in section IV.C. of the policy, or initiate any other suitable process until we receive actionable information from you that identifies the professors and their alleged wrongdoing. If your concerns relate to specific research papers published by these professors, please identify the papers and the manner in which the results have been misrepresented. If instead your concerns relate to the professors' involvement with CARB, please describe the nature of that involvement that is of concern.

Norman R. Brown
March 17, 2009
page 2

I would encourage you to provide our office with that specific information so we can determine the policies or standards of conduct that are at issue and the processes that may be needed to resolve the matter.

Sincerely,

A handwritten signature in black ink, appearing to read "W. H. Cormier". The signature is fluid and cursive, with a large initial "W" and "H" that are connected to the rest of the name.

William H. Cormier
Director

Enclosure

cc: Chancellor Gene Block (w/o enc.)

UCLA Policy 993: Responding to Allegations of Research Misconduct

Issuing Officer: Executive Vice Chancellor & Provost
Responsible Dept: Office of the Vice Chancellor for Research
Effective Date: June 16, 2006
Supersedes: UCLA Policy 993, dated 7/1/1998; and
UCLA Procedure 993.1, dated 7/1/1997

- I. REFERENCES
- II. DEFINITIONS
- III. GENERAL POLICY
- IV. PROCEDURES
- V. ATTACHMENTS

I. REFERENCES

1. UC Policy on Integrity in Research, June 19, 1990;
2. UCLA Policy 910, Management of Contract and Grant Projects;
3. Code of Federal Regulations, Title 42, Part 93: Public Health Services Policies on Research Misconduct, as modified, effective June 16, 2005.

II. DEFINITIONS

Initial Assessment: Initial evaluation of allegations of Research Misconduct by the Research Integrity Officer.

Inquiry: Preliminary information gathering and fact-finding to determine whether an allegation of Research Misconduct warrants an Investigation.

Investigation: The formal development of a factual record and the examination and evaluation of that record to determine if Research Misconduct has occurred and, if so, to determine the responsible person(s).

Research: A systematic experiment, study, evaluation, demonstration or survey designed to develop or contribute to general knowledge (basic Research) or specific knowledge (applied and demonstration Research) by establishing, discovering, developing, elucidating or confirming information about or the underlying mechanism relating to, causes, functions or effects.

Research Integrity Officer: The institutional official at UCLA responsible for coordinating campus actions taken in response to allegations of Research Misconduct. At UCLA, the Vice Chancellor for Research (VCR) serves as the Research Integrity Officer, except that the Vice Chancellor, Academic Personnel shall serve instead of the VCR if, in a particular Research Misconduct Proceeding, the VCR has a conflict of interest.

Research Misconduct: Fabrication, falsification, or plagiarism in proposing, performing, or reviewing Research, or in reporting Research results. It does not include honest error or differences of opinion.

- **Fabrication** is making up data or results and recording or reporting them.
- **Falsification** is manipulating Research materials, equipment or processes, or changing or omitting data or results, such that the Research is not accurately represented in the Research Record.

- **Plagiarism** is the appropriation of another person's ideas, processes, results, or words, without giving appropriate credit, but not a dispute among collaborators about authorship or credit.

Research Misconduct Investigator: A person designated by the VCR to assist in conducting a Research Misconduct Proceeding.

Research Misconduct Proceeding: Any formal University action (or other action by a Research Sponsor with regulatory responsibility) related to an allegation of Research Misconduct, including but not limited to an Initial Assessment, Inquiry, or Investigation.

Research Record: The record of data or results that embody the facts resulting from Research, including but not limited to Research proposals, laboratory records (both physical and electronic), progress reports, abstracts, theses, oral presentations, databases, internal reports, and journal articles, as well as any documents and materials provided to the Research Sponsor or to UCLA, or its employees, by a Respondent in the course of a Research Misconduct Proceeding.

Research Sponsor: A governmental or non-governmental entity that funds Research (such as the Public Health Service, the National Science Foundation, or the American Cancer Society) or has oversight responsibility for Research Misconduct, such as the Office of Research Integrity of the U.S. Department of Health and Human Services (ORI).

Respondent: The person or persons against whom an allegation of Research Misconduct is directed or who is the subject of a Research Misconduct Proceeding.

III. GENERAL POLICY

UCLA is committed to maintaining the integrity of scholarship and Research and to fostering a climate conducive to Research integrity in accordance with the University's Policy on Integrity in Research. Such integrity includes not just the avoidance of wrong doing, but also the rigor, carefulness and accountability that are hallmarks of good scholarship. All persons engaged in Research at UCLA are responsible for adhering to the highest standards of intellectual honesty and integrity. Faculty and other supervisors of Research have a responsibility to create an environment that encourages those high standards through open publication and discussion, emphasis on quality of Research, appropriate supervision, maintenance of accurate and detailed Research procedures and results, and suitable assignment of credit and responsibility for Research.

UCLA assumes primary responsibility for: 1) assessing allegations of Research Misconduct; 2) conducting Inquiries and Investigations; 3) reporting the results to Research Sponsors as required; 4) determining and implementing disciplinary action as appropriate; 5) cooperating with Research Sponsors, such as ORI, during Research Misconduct Proceedings and assisting in administering and enforcing any federal administrative actions imposed upon UCLA or persons at UCLA; 6) having in place an active assurance of compliance with ORI; and 7) taking reasonable steps to ensure the cooperation of Respondents and others at UCLA with Research Misconduct Proceedings.

Some practices (including but not limited to matters involving misuse of University funds, facilities and resources, use of human subjects, confidentiality, authorship, conflicts of interest, conflicts of commitment, misuse of animals, etc.) are not Research Misconduct, but may be violations of other University policies, such as the Code of Faculty Conduct, the UCLA Student Code of Conduct, or Personnel Policies for Staff Members.

This policy is intended to satisfy the requirements of the U.S. Department of Health and Human Services (DHHS), and other federal agencies. However, this policy also applies to all Research conducted under the responsibility of UCLA, whether or not the Research is supported by an external sponsor.



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CONSTRUCTION CO., INC.

April 13, 2009

Chancellor Gene Block
University of California, Los Angeles
2147 Murphy Hall
Los Angeles, CA 90095-1405

Re: Alleged Unethical Conduct by UCLA Professors Mary D. Nichols and John R. Froines

Dear Chancellor Block:

I greatly appreciate the March 17, 2009 response from William H. Cormier regarding my March 11, 2009 letter to you concerning two UCLA professors. In separate enclosed complaints I have presented specific allegations of unethical conduct against UCLA Professors Mary D. Nichols and John R. Froines. These complaints are directly related to provisions in the *UCLA Policy 993*, the *University of California Standards of Ethical Conduct*, and the *California Health and Safety Code*. Specifically, I allege that these two professors, through their actions in connection with the California Air Resources Board (CARB), have grossly misrepresented scientific results in the research record. This amounts to falsification, a direct violation of *UCLA Policy 993*. In addition, they have failed to follow proper legal requirements for establishing California regulations, a direct violation of the *University of California Standards of Ethical Conduct* and the *California Health and Safety Code*. Because of the seriousness of these complaints, I request that you personally review them. You may forward the second copy to Mr. Cormier for formal evaluation.

My complaints primarily concern a major on-going scientific dispute over the health effects of diesel particulate matter (PM) on Californians. My understanding is that the available epidemiological and toxicological evidence regarding diesel PM health effects in California does not justify the draconian regulations approved by CARB to reduce diesel emissions from off-road and on-road diesel vehicles. During the past two years, Professor Nichols, Chair of CARB, has played a major role in the approval of these diesel regulations, which are estimated to cost more than \$10 billion to implement. During the past eleven years, Professor Froines, Chair of the CARB Scientific Review Panel on Toxic Air Contaminants, has played a major role in designating diesel PM as a toxic air contaminant (TAC) and in emphasizing the adverse health effects of diesel PM on Californians.

Both Professors Nichols and Froines support the CARB claim that diesel PM contributes to 3,500 premature deaths per year in California. The alleged lethality of diesel PM is the primary public health rationale for the off-road diesel regulations that CARB put into effect on June 15,

Chancellor Gene Block

April 13, 2009

2008 and the on-road diesel regulations that CARB approved on December 12, 2008. I believe that Professors Nichols and Froines are the two individuals most responsible for these costly diesel regulations. Furthermore, I believe that these regulations are not warranted for these several important reasons:

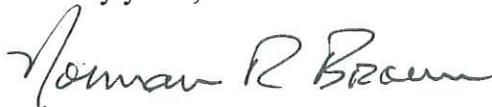
- The observational epidemiologic evidence relating diesel PM and mortality, particularly within California, is too weak and uncertain to justify CARB regulations;
- The epidemiologic evidence relevant to California has not been independently verified;
- CARB peer reviewers and scientific advisors are biased towards the regulatory goals expounded by CARB;
- With one of the lowest total age-adjusted death rates in the United States, California certainly cannot be experiencing premature deaths due to diesel PM.

My concerns are the same as those contained in the enclosed February 17, 2009 letter to Professor Nichols and other CARB members from Assemblymen Chuck DeVore and Mike Villines and Senator Lou Correa of the California State Legislature (Attachment A). This letter provides scientific, legal, and economic justifications for the "Temporary Suspension of CARB On-Road and Off-Road Diesel Truck Regulations." Further criticism of CARB diesel science and regulations is given in the following enclosures: May 27, 2008 Washington Times Commentary "Diesel Risks Mostly Hot Air?" (Attachment B) by Henry I. Miller, M.D., of the Hoover Institution at Stanford University and December 3, 2008 "Request to Postpone and Reassess CARB Diesel Regulations" (Attachment C) by James E. Enstrom, Ph.D., and Matthew A. Malkan, Ph.D., of UCLA, Robert F. Phalen, Ph.D., of UC Irvine, and Anthony Fucaloro, Ph.D., of Claremont McKenna College.

In summary, I request that you have my allegations evaluated in accord with *UCLA Policy 993*. If my allegations are not clear enough, I request the opportunity to submit additional clarifying material. Based on my own frustrating experiences in dealing with Professor Nichols regarding CARB diesel science and regulations, it may be very difficult for UCLA to fully and fairly evaluate my allegations, but I greatly appreciate your willingness to try. I, along with countless others, have pleaded with Professor Nichols about the devastation to California industries without adequate justification, only to be met with indifference bordering on animus to those of us whose businesses will be destroyed via edict. Since this matter is extremely important to me and thousands of other adversely impacted California businessmen who are struggling to survive in the current troubled economy, I eagerly await your findings.

Thank you very much for your consideration.

Sincerely yours,



Norman R. Brown, President
Delta Construction Company, Inc.

Alleged Unethical Conduct by UCLA Professor Mary D. Nichols

Mary D. Nichols is Professor in the UCLA Institute of the Environment (http://www.ioe.ucla.edu/people/person.asp?Facultystaff_ID=10) and Professor in Residence in the UCLA Law School (<http://www.law.ucla.edu/home/index.asp?page=640>), as well as Chair, California Air Resources Board (CARB) (<http://www.arb.ca.gov/board/bio/chair.htm>). Below are four specific allegations of unethical conduct by Professor Nichols, who has been directly involved with matters described in each allegation. Several hundred pages are needed to fully describe these allegations, but only a few essential pages have been enclosed with this complaint. All of the pages can and should be viewed or printed from the Internet by using the weblinks contained within the text below.

1) Three Allegations of Falsification of Scientific Evidence:

a) The October 24, 2008 CARB Staff Report “Methodology for Estimating Premature Deaths Associated with Long-term Exposure to Fine Airborne Particulate Matter in California” (http://www.arb.ca.gov/research/health/pm-mort/pm-mort_final.pdf) seriously misrepresents the relationship between fine particulate matter (PM) and premature deaths in California and does not properly incorporate 148 pages of July 11, 2008 CARB public comments on the draft version of this report (http://www.arb.ca.gov/research/health/pm-mort/pm-mort_supp.pdf). Evidence of falsification is given in the public comments and in the scientific criticism published in the January 2009 California Transportation News “A Regulatory Fraud or a Polluted Process?” (http://www.cdtoa.org/old_archives/2009/01_09/TransNewsLowResProof.pdf), pages 5-9, 11, 26, 27.

b) The December 16, 2008 CARB summary “Health Effects of Diesel Exhaust Particulate Matter” (http://www.arb.ca.gov/research/diesel/dpm_draft_3-01-06.pdf) is featured as part of “Diesel Health Effects” on the homepage for CARB “Diesel Programs and Activities” (<http://www.arb.ca.gov/diesel/diesel.htm>). This summary misrepresents the current health effects of diesel PM in California and fails to incorporate the July 11, 2008 public comments on CARB diesel science (http://www.arb.ca.gov/research/health/pm-mort/pm-mort_supp.pdf). Evidence of falsification in this summary is given in the public comments and the scientific criticism published in the January 2009 California Transportation News, as cited above.

c) A March 15, 2009 Bakersfield Californian column (Attachment D) by Assistant Managing Editor Lois Henry describes how bad science and regulations from CARB are harming California industries (<http://www.bakersfield.com/news/columnist/henry/x1763640146/Lois-Henry-Dodgy-science-strangles-industry>). In her March 25, 2009 Bakersfield California Forum response (Attachment E) to Lois Henry, Professor Nichols seriously misrepresents the current health effects of diesel PM on Californians and indicates no willingness to address legitimate criticism of CARB diesel science (<http://www.bakersfield.com/opinion/forum/x468334809/California-cant-wait-on-diesel-regs>). In her March 25, 2009 Blog response to Professor Nichols (Attachment F), Lois Henry fully defends her column, emphasizing that the epidemiologic studies used by CARB have not been independently verified (<http://people.bakersfield.com/home/Blog/noholdsbarred/42886#comments>). Furthermore, a March 14, 2009 San Diego Union-Tribune editorial (Attachment G) harshly criticizes CARB diesel science (<http://www3.signonsandiego.com/stories/2009/mar/14/lz1ed14top213329-air-boards-shame>).

2) Allegation of Failure to Follow California Health and Safety Code Sections 39670-39671

California Health and Safety Code Sections 39670-39671 define the CARB Scientific Review Panel (SRP) on Toxic Air Contaminants (TAC) (Attachment H) (<http://caselaw.lp.findlaw.com/cacodes/hsc/39670-39671.html>) and (<http://www.scientificintegrityinstitute.org/SRP060608.pdf>), as summarized on two enclosed pages. Section 39670 (b) states “The members of the panel shall be highly qualified and professionally active or engaged in the conduct of scientific research, and shall be appointed as follows, subject to Section 39671, for a term of three years.” Section 39670(b) (4) states “Members of the panel shall be appointed from a pool of nominees submitted to each appointing body by the President of the University of California. The pool shall include, at a minimum, three nominees for each discipline represented on the panel, and shall include only individuals who hold, or have held, academic or equivalent appointments at universities and their affiliates in California.” Section 39671 states “The terms of the members of the Scientific Review Panel on Toxic Air Contaminants appointed pursuant to subdivision (b) of Section 39670 shall be staggered so that the terms of three members expire each year.” Section 39671 is a result of the February 21, 1986 Assembly Bill AB 3792 by Marion La Follette, which states “Existing law establishes the Scientific Review Panel on Toxic Air Contaminants composed of 9 members appointed for 3-year terms effective January 1, 1984. . . . This bill would revise the terms of panel members by extending the terms of 3 panel members until January 1, 1988, and 3 until January 1, 1989, as specified, so that the terms of the members will be staggered with 3 terms expiring each year.” (<http://www.scientificintegrityinstitute.org/SRPAB090983.pdf>). The specification of “a term of three years” and of precise ending dates above clearly indicates that the intent of the California legislature was to have timely turnover on the panel, not appointments of indefinite length.

However, Professor Nichols has not followed the above Code Sections regarding the appointment and reappointment of SRP members. Information from CARB SRP transcripts and other sources indicates that all current SRP members have served at least 5 years, 5 members have served at least 12 years, and two members have served at least 23 years. One member who has been on the panel since 1986 was reappointed on January 9, 2008; another member who has been on the panel since 1997 was reappointed on February 10, 2009; and another member who has been on the panel since at least 1986 is up for reappointment during 2009. Because SRP members have not been nominated or renominated in accordance with Code Section 39670 (b), the SRP has been dominated for two decades by a few activist scientists who are NOT representative of the large pool of California scientists who are qualified to serve. If representative scientists had been on this panel in 1998 then diesel PM may never have been designated as a TAC and the Draconian diesel regulations approved by CARB may never have been imposed on California businesses. When a regulatory agency like CARB has vast authority and impacts the economic viability and livelihood of thousands of Californians, it is very important that this agency follow the law as enacted by the California legislature. During the past year Professor Nichols has been repeatedly informed about these legal issues, such as, via the enclosed February 17, 2009 letter from Assemblymen Chuck DeVore and Mike Villines and Senator Lou Correa (Attachment A) of the California State Legislature (http://www.arb.ca.gov/lists/siprev09/1-carb_devore_villines_correa_letter_regarding_diesel_regs_021709.pdf).

Alleged Unethical Conduct by UCLA Professor John R. Froines

John R. Froines, Ph.D., is Professor in the UCLA School of Public Health (http://portal.ctrl.ucla.edu/sph/institution/personnel?personnel_id=45492) and UCLA Institute of the Environment (http://www.ioe.ucla.edu/people/person.asp?Facultystaff_ID=75), as well as Chair, California Air Resources Board (CARB) Scientific Review Panel (SRP) on Toxic Air Contaminants (TAC) (<http://www.arb.ca.gov/srp/public.htm>). Below are two specific allegations of unethical conduct by Professor Froines. Several hundred pages are needed to fully describe these allegations, but only a few essential pages have been enclosed with this complaint. All of the pages can and should be viewed or printed from the Internet by using the weblinks contained within the text below.

1) Allegation of Falsification of Scientific Evidence:

Evidence of falsification is contained in the enclosed June 4, 2008 letter (Attachment I) that Professor Froines wrote to Senator Don Perata recommending California Senate confirmation of Mary D. Nichols as Chair, CARB (<http://www.scientificintegrityinstitute.org/FroinesNichols060408.pdf>). This letter included the enclosed Attachment on diesel particulate matter (PM) and mortality (<http://www.scientificintegrityinstitute.org/FroinesDiesel060408.pdf>). The 23 scientists that Professor Froines cited in the Attachment all agreed with the findings of CARB Staff Report on PM and premature deaths (http://www.arb.ca.gov/research/health/pm-mort/pm-mort_final.pdf). However, his letter and Attachment failed to cite a single dissenting scientist or any of the epidemiologic evidence that clearly indicates there is NO current relationship between PM and mortality in California. His sentence "While there may be a few studies that suggest a lack of evidence for the relationship, the overwhelming evidence suggests the relationship is positive" does not accurately describe the epidemiologic evidence in California. Specific evidence of falsification in the Attachment is given in the enclosed pages of scientific criticism published in the January 2009 California Transportation News "A Regulatory Fraud or a Polluted Process?" (Attachment J) (http://www.cdtoa.org/old_archives/2009/01_09/TransNewsLowResProof.pdf, pages 7-9).

Furthermore, Professor Froines failed to mention the extensive, long-term efforts to reverse the August 27, 1998 CARB declaration of diesel PM as a TAC, which was a direct result of his May 27, 1998 diesel TAC letter (<http://www.arb.ca.gov/toxics/dieseltac/combined.pdf>). Professor Froines is well aware of the intense scientific controversy regarding diesel PM because he was named as a defendant in the 1999-2006 lawsuit (Apodaca et al. v. California Air Resources Board et al.) that challenged the diesel PM TAC declaration (<http://www.scientificintegrityinstitute.org/Apodaca021706.pdf>). Also, Professor Froines is well aware that three of the 23 scientists he cited in the Attachment have published key epidemiologic research on PM and mortality that is based on the 1982 American Cancer Society (ACS) Cancer Prevention Study (CPS II) cohort database. These three scientists have refused to facilitate any form of independent reanalysis of the ACS database, in violation of the Federal Data Quality Act. For his Attachment to be objective, Professor Froines should have acknowledged that the evidence used by CARB to establish a relationship between diesel PM and mortality in California has not been independently verified and is still highly disputed, as evident in the 148 pages public comments on this relationship, that were submitted to CARB as of July 11, 2008 CARB (http://www.arb.ca.gov/research/health/pm-mort/pm-mort_supp.pdf).

2) Allegation of Failure to Follow California Health and Safety Code Section 39670.

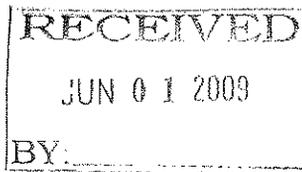
Professor Froines has served as the toxicologist on the CARB SRP since at least 1986 and is currently up for reappointment to another three-year term. No other California toxicologist has had an opportunity to serve during this period. This is in violation of the letter and spirit of the California Health and Safety Code Section 39670, which clearly specifies that each SRP member is to be appointed for a term of three years and is to be appointed from a pool of at least three nominees submitted to the appropriate appointing body by the President of the University of California (<http://caselaw.lp.findlaw.com/cacodes/hsc/39670-39671.html>). Indeed, the selection process for all nine SRP members has not followed Code Section 39670. Information from CARB SRP transcripts and other sources indicates that all SRP members have served at least 5 years, 5 members have served at least 12 years, and Professor Froines and one other member have served at least 23 years. One consequence of this pattern of service is that the SRP consists primarily of activist scientists who are NOT representative of the diversity of all California scientists who are qualified to serve on this panel. Furthermore, Professor Froines, who has been SRP Chair since 1998, is well aware of this situation regarding SRP appointments.

Since Professor Froines first began assessing diesel exhaust as a potential TAC for the SRP in 1989, he has been the California scientist most responsible for emphasizing the adverse health effects of diesel PM and for getting it declared a TAC. This TAC declaration is primarily based on weak and controversial epidemiologic relationships between PM and deaths, not on the toxicological evidence that falls within Professor Froines' scientific area of expertise. Most experimental toxicological evidence does not support the health risks of diesel PM found in the epidemiologic studies. Furthermore, other California toxicologists disagree with Froines' assessment of diesel PM toxicity. UC Irvine Professor Robert F. Phalen has described this disagreement in his 2002 book "The Particulate Air Pollution Controversy: A Case Study and Lessons Learned" (http://www.amazon.com/gp/reader/1402072252/ref=si3_rdr_ty). Professor Phalen has run the UC Irvine Air Pollution Health Effects Laboratory for over 30 years and currently serves on the directly relevant US Environmental Protection Agency (EPA) Clean Air Scientific Advisory Committee Particulate Matter Review Panel (CASAC-PMRC) (<http://yosemite.epa.gov/sab/sabpeople.nsf/WebPeople/PhalenRobert%20F.?OpenDocument>). Furthermore, the 669-page 2002 US EPA "Health Assessment Document for Diesel Engine Exhaust" does not support the CARB finding that diesel exhaust causes premature deaths (<http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060>).

This scientific controversy is one key reason why it is important to have appointments to the SRP made in full accordance with Code Section 39670. The fact that CARB diesel regulations costing billions of dollars to implement are a direct result of a SRP TAC determination is an even more important reason why Professor Froines and other SRP members should be required to strictly adhere to all relevant provisions of California Health and Safety Code. Since thousands of California businesses are in danger of extinction because of CARB regulations that do not exist in any other state and that appear to be scientifically unjustified, the above allegations of unethical conduct should be fully and fairly evaluated in a timely manner.

Attachments:

- (A) February 17, 2009 letter to Professor Nichols and other CARB members from Assemblymen Chuck DeVore and Mike Villines and Senator Lou Correa of the California State Legislature (http://www.arb.ca.gov/lists/siprev09/1-carb_devore_villines_correa_letter_regarding_diesel_regs_021709.pdf) (2 pages)
- (B) May 27, 2008 Washington Times Commentary “Diesel Risks Mostly Hot Air?” by Henry I. Miller, M.D., of the Hoover Institution at Stanford University (<http://www.ciaqc.com/ciaqc/releases/49.htm>) (2 pages)
- (C) December 3, 2008 “Request to Postpone and Reassess CARB Diesel Regulations” by James E. Enstrom, Ph.D., and Matthew A. Malkan, Ph.D., of UCLA, Robert F. Phalen, Ph.D., of UC Irvine, and Anthony Fucaloro, Ph.D., of Claremont McKenna College (http://www.arb.ca.gov/lists/truckbus08/902-request_to_postpone_and_reassess_carb_diesel_regulations_120308.pdf) (1 page)
- (D) March 15, 2009 Bakersfield Californian column by Assistant Managing Editor Lois Henry (<http://www.bakersfield.com/news/columnist/henry/x1763640146/Lois-Henry-Dodgy-science-strangles-industry>) (2 pages)
- (E) March 25, 2009 Bakersfield Californian letter by Professor Nichols (<http://www.bakersfield.com/opinion/forum/x468334809/California-cant-wait-on-diesel-regs>) (1 page)
- (F) March 25, 2009 response to Professor Nichols by Lois Henry (<http://people.bakersfield.com/home/Blog/noholdsbarred/42886#comments>) (1 page)
- (G) March 14, 2009 San Diego Union-Tribune editorial “Air Board’s Shame” (<http://www3.signonsandiego.com/stories/2009/mar/14/lz1ed14top213329-air-boards-shame>) (attached PDF) (1 page)
- (H) Summary of California Health and Safety Code Sections 39670-39671 which define the CARB Scientific Review Panel (SRP) on Toxic Air Contaminants (TAC) (<http://www.scientificintegrityinstitute.org/SRP060608.pdf>) (2 pages)
- (I) June 4, 2008 letter that Professor Froines wrote to Senator Don Perata recommending California Senate confirmation of Mary D. Nichols as Chair, CARB (<http://www.scientificintegrityinstitute.org/FroinesNichols060408.pdf>) (2 pages) June 4, 2008 Attachment from Professor Froines on diesel particulate matter (PM) and mortality (<http://www.scientificintegrityinstitute.org/FroinesDiesel060408.pdf>) (2 pages)
- (J) Evidence of falsification in the Froines Attachment in the January 2009 California Transportation News “A Regulatory Fraud or a Polluted Process?” (http://www.cdtoa.org/old_archives/2009/01_09/TransNewsLowResProof.pdf), (pages 7-9)



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May 27, 2009

PERSONAL & CONFIDENTIAL

Norman Brown
Delta Construction Company
P.O. Box 277517
Sacramento, CA 95827

Re: Your Allegations of Unethical Conduct by Two UCLA Professors

Dear Mr. Brown:

This responds to the letter and supporting materials you submitted to UCLA Chancellor Gene Block and to me on April 13 alleging certain unethical conduct by UCLA Professors Mary Nichols and John Froines related to their service on the California Air Resources Board (ARB). As I informed you on our recent phone conversation, UCLA has concluded that your concerns raise public policy issues only and not issues of potential research misconduct, as you contend, that would warrant an investigation under University policy.

Your concern is with what you described as a major on-going scientific dispute over the health effects of diesel particulate matter (PM) on Californians and recently approved ARB regulations reducing diesel truck vehicle emissions that will impose significant costs to your industry. You cite scientific arguments that the available epidemiological and toxicological evidence regarding such health effects does not justify the "draconian" regulations that were approved and the lack of independent verification of the evidence on which the ARB did rely. You cite a letter from California Assemblymen Chuck DeVore and Mike Villines and Senator Lou Correa which purports to provide scientific, legal, and economic justifications for the temporary suspension of the CARB regulations, and you attached to your letter a number of news, commentary, trade journal articles, and scientific references critical of the regulations.

You fault Mary Nichols, Chair of ARB and John Froines, Chair of the Scientific Review Panel on Toxic Air Contaminants that advises ARB, as most responsible for designating diesel PM as a toxic air contaminant based on an exaggeration of the adverse health effects of diesel PM on Californians. You assert that both Professors Nichols and Froines support the ARB claim that diesel PM contributes to 3,500 premature deaths per year in California and you refer to scientific arguments that such a claim ignores evidence of substantial geographic variation in the PM health effects within the United States and within California. As to each of the UCLA

Professors you allege the falsification of scientific evidence and a failure to follow California Health and Safety Code Sections 39670-39671.

In response, let me first point out that the University's investigative and disciplinary processes are limited generally to actions of our faculty and staff that occur within the course and the scope of their University employment. University faculty, in particular, are typically engaged in various scientific, cultural and other public service activities nationally and internationally. The University might have reason to examine the outside activity of an employee in circumstances where serious misconduct there reflects unfavorably on the University or where the employee's participation in the outside activity raises a question of an unresolved conflict of interest or commitment. But absent such circumstances the University does not investigate the outside conduct of its faculty or staff.

Secondly, the conduct you question here concerns the outside State government service activities of Professor Nichols in her role as Chair of the Air Resources Board and of Professor Froines in his role as Chair of the Scientific Review Panel. ARB board members are appointed by the Governor with the consent of the Senate. Such board members serve at the pleasure of the Governor. The Scientific Review Panel members are appointed by the Secretary of Environmental Protection (five members); the Senate Committee on Rules (two members), and the Speaker of the Assembly (two members).

The conduct of board and panel members in connection with their board activities is subject to oversight by agencies of the State government and the State legislature. Your concerns are with State governmental actions and are more properly addressed to the State entities responsible for appointing the board or panel members and overseeing the activities of the board. The usual administrative, legal, and political process remedies are available to those who wish to question or challenge State agency actions. It would be an improper confusion of roles for the University to investigate the actions of governmental agencies or its members, who happen to be faculty members, for the purpose of disqualifying or discrediting such faculty in the discharge of their government service responsibilities.

Third, your concern with the purported failure of our two faculty members in following the California Health and Safety Code section concerned with the terms of appointment for Scientific Review Panel members is misdirected to the University. Clearly, such concerns there should be directed to those State officials responsible for making such appointments, that is, as identified in the applicable statute and above, the Secretary of Environmental Protection, the Senate Committee on Rules, and the Speaker of the Assembly.

Lastly, your allegation of falsification of scientific evidence misconstrues the purpose and reach of our Policy for Responding to Allegations of Research Misconduct which you cited. This policy applies to research conducted by UCLA faculty or academic appointees under the sponsorship of UCLA and is narrowly focused on specific instances of fabrication of data, falsification or plagiarism. This policy is not used to settle bona fide scientific disputes over the interpretation of data.

You refer to evidence of falsification given in public rule-making comments and in scientific criticism published in the trade publication California Transportation News, including

Norman Brown
May 27, 2009
page 3

criticism in that publication by another UCLA public health professor. While this criticism includes charges of bad science, lack of independent verification of studies, and unwillingness by the ARB to address legitimate criticism, it does not support your charge that data was falsified, much less specific data in scientific research published at UCLA by our professors.

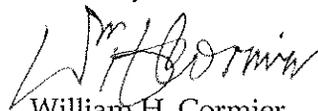
Your criticize Professor Froines for being most responsible for emphasizing the adverse health effects of diesel PM in California, for failing to acknowledge or credit dissenting scientific views, and for his long tenure on the Scientific Review Panel which you believe violates the letter and spirit of the appointment statute. However, you do not present credible evidence that Professor Froines falsified research data. Your allegation of research misconduct by Professor Nichols is entirely misplaced since Professor Nichols is not a scientist and does not publish scientific research. As pointed out, your concerns about panel or board appointments should be directed to the appointing authorities.

Nevertheless, I referred your allegations of scientific misconduct to the UCLA's research integrity officer Vice Chancellor and Professor Roberto Peccei. Vice Chancellor Peccei conducted a preliminary assessment as called for under the policy and concluded that the information you have provided was neither credible nor specific enough under our policies to warrant a research misconduct inquiry.

You have presented much credible evidence that there is an ongoing scientific dispute over the health effects of diesel particulate matter with different interpretations of the available data and with significant implications for the transportation industry and the economy generally. However, the thrust of the issue appears to concern State government agency decision-making as related to the formation of environmental policy. In any event, your issues do not raise specific research misconduct concerns and the University must reject your request to treat them as such.

I appreciate the care with which you organized the materials you submitted and the opportunity to discuss this matter with you personally.

Sincerely,



William H. Cormier
Director

cc: Chancellor Gene Block
Vice Chancellor Roberto Peccei

ORIGINAL

Dept 31

FILED
Superior Court Of California,
Sacramento
06/18/2009
jrover
By _____, Deputy
Case Number
34-2009-80000266

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13 NORMAN R. BROWN; ROBINSON ENTERPRISES,)
LTD.; NORTH BAY CORPORATION; CALIFORNIA)
14 DUMP TRUCK OWNERS ASSOCIATION;)
SOUTHERN CALIFORNIA CONTRACTORS)
15 ASSOCIATION; CONSTRUCTION INDUSTRY AIR)
QUALITY COALITION; CRANE OF UKIAH, INC.;)
16 DIAMOND D GENERAL ENGINEERING, INC.; and)
MHS CORPORATION COMPACTION RENTALS,)

No. _____

**VERIFIED PETITION
FOR WRIT OF MANDATE
(Code Civ. Proc. §1085)**

17 Petitioners,

18

v.

19

20 LINDA ADAMS, in her official capacity as Secretary,)
California Environmental Protection Agency;)
21 KAREN BASS, in her official capacity as Speaker)
of the California Assembly; THE CALIFORNIA)
SENATE COMMITTEE ON RULES; and)
22 MARK G. YUDOF, in his official capacity as)
President of the University of California,)

23

Respondents.

24

25

26

27

28



(916) 364-0292
FAX (916) 364-7641
P.O. Box 277517
Sacramento, CA 95827
CLN 257024

CONSTRUCTION CO., INC.

June 30, 2009

William H. Cormier, Director
Administrative Policies & Compliance
University of California, Los Angeles
2255 Murphy Hall
Los Angeles, CA 90095-1405

Re: Alleged Unethical Conduct by UCLA Professors Mary D. Nichols and John R. Froines

Dear Mr. Cormier,

Thank you very much for your May 27, 2009 response to my April 13, 2009 complaint. I fail to understand how you could conclude that my allegations about Professors Mary D. Nichols and John R. Froines do not constitute scientific misconduct as defined in ***UCLA Policy 993*** (<http://www.adminvc.ucla.edu/appm/public/993.htm>). Based on my educational background and my 44-year experience as a successful businessman in California, I find that the behavior of Professors Nichols and Froines does not support Policy 993's strongly worded General Policy. Specifically, their "selective research tactics" do not support "fostering a climate conducive to research integrity in accordance with the University's Policy on Integrity in Research." Additionally, I strongly believe that my allegations constitute **unethical conduct** based on the ***UC Standards of Ethical Conduct*** (<http://www.universityofcalifornia.edu/compliance/ethics/ethicalconduct.html>).

The sentences from these ***Standards*** that most directly apply to my allegations are as follows:
Purpose "In that spirit, the Standards of Ethical Conduct are a statement of our belief in **ethical, legal and professional behavior in all of our dealings inside and outside the University**"
(2) "Members of the University community are expected to conduct themselves ethically, honestly and with integrity **in all dealings**. This means principles of fairness, good faith and respect consistent with laws, regulations and University policies govern our conduct with others **both inside and outside the community**"
(4) "Members of the University community are expected to become familiar with the laws and regulations bearing on their areas of responsibility. **Many but not all** legal requirements are embodied in University policies"
(7) "All members of the University community engaged in research are expected to conduct their research with integrity and intellectual honesty **at all times** Members of the University community engaged in research are not to . . . **knowingly omit data or results to misrepresent results in the research record**"

Essentially, your policy states that to be a member in good standing, your ethics cannot be compromised when you are off the UCLA campus. This is the main thrust of my complaint. I have presented numerous incidences of compromised ethics but your response attempts to narrate my complaint as a "public policy issue and not issues of potential research misconduct." Am I to assume that it is acceptable with UCLA to allow some "modification" of a member's ethics when "off campus"? Not according to the Standards of Ethical Conduct, which state that "The University might have reason to examine the outside activity of an employee in circumstances where serious misconduct there reflects unfavorably on the University" I contend that my allegations against Professor Nichols and Professor Froines constitute very serious misconduct and, when fully brought to light, will reflect quite seriously on your fine university. Sunlight is a great disinfectant, and I intend to provide the light supported by research from credible and accomplished scientists. The actual economic damage brought about by CARB's edicts has the potential to preclude California from emerging from our current economic debacle for a decade or more, if ever.

You also state that UCLA Policy "applies to research conducted by UCLA faculty or academic appointees under the sponsorship of UCLA and is narrowly focused on specific instances of fabrication of data, falsification or plagiarism." Falsification is defined (in part) in Policy 993 as "manipulating Research materials, equipment or processes, or **changing or omitting data or results**, such that the Research is not accurately represented in the Research Record". THIS IS EXACTLY WHAT HAS BEEN DONE. Under the specific direction of Professor Nichols, supported by the research of Professor Froines, CARB has excluded or attempted to diminish any data that conflicts with their agenda. By the very virtue of their UCLA professorships, they drag your institution into this fray. This will not bode well with the massive California business community that supports your fine organization. A failure to review this behavior by two of your professors, under the guise that they do not represent UCLA when dealing with public policy, will not go unnoticed by your benefactors, especially those severely impacted by the unnecessary regulations.

I take specific issue with your statement that "the information you have provided was neither credible nor specific enough under our policies to warrant a research misconduct inquiry." A substantial amount of very specific evidence was presented in my April 13, 2009 allegations. I could have sent you several hundred pages, but abbreviated the text to not overwhelm you. Thus, I believe that my allegations deserve a more careful evaluation. My concerns are supported by at least ten very fine physicians and scientists who have submitted public comments to CARB during the past year: John D. Dunn, M.D., J.D., from Texas; James E. Enstrom, Ph.D., from UCLA; Anthony Fucaloro, Ph.D., from Claremont McKenna College; Frederick W. Lipfert, Ph.D., from New York; Matthew A. Malkan, Ph.D., from UCLA; Henry I. Miller, M.D., from the Hoover Institution; Suresh H. Moolgavkar, M.D., Ph.D., from the University of Washington; D. Warner North, Ph.D., from Stanford University; Robert F. Phalen, Ph.D., from UC Irvine; and S. Stanley Young, Ph.D., from the National Institute of Statistical Sciences.

In order to make my allegations as directly relevant to UCLA as possible, I request that you further assess my allegations regarding Professor Froines, who has been a full-time faculty

member at the UCLA School of Public Health since 1981. To make my case against Professor Froines as strong as possible, I have used the Internet (Google.com, PubMed.gov, and www.ucla.edu) to formulate additional allegations of falsification that add to my original April 13, 2009 allegations (Attachment A).

Elinor W. Fanning, a UCLA toxicologist, and John R. Froines are the first two authors of a February 2009 peer-reviewed paper "Particulate Matter (PM) Research Centers (1999–2005) and the Role of Interdisciplinary Center-Based Research" *Environmental Health Perspectives* 2009;117:167–174 (<http://www.ehponline.org/members/2008/11543/11543.pdf>) (Attachment B). Quotes from the Abstract are: "Objective: The U.S. Environmental Protection Agency funded five academic centers in 1999 to address the uncertainties in exposure, toxicity, and health effects of airborne particulate matter (PM) identified in the "Research Priorities for Airborne Particulate Matter" of the National Research Council (NRC). . . . Data sources and synthesis: The collective publications of the centers served as the data source. To provide a concise synthesis of overall findings, authors representing each of the five centers identified a limited number of topic areas that serve to illustrate the key accomplishments of the PM Centers program, and a consensus statement was developed. **Conclusions: The PM Centers program has effectively applied interdisciplinary research approaches to advance PM science.**"

I have evidence that this paper does not "provide a concise synthesis of overall findings." For instance, the section "*Life shortening associated with exposure to PM*" (page 170) is quite misleading. The first reference (Zanobetti et al. 2003) deals only with European cities and it provides no evidence that "life shortening" is "associated with exposure to PM." The second reference (Laden et al. 2006) provides evidence that the relationship in between PM2.5 and total mortality in six Midwestern cities has declined since the 1970s and 1980s and was barely significant in the 1990s. The final two references (Pope et al. 2002 and Pope and Dockery 2006) provide evidence that the relationship PM2.5 and total mortality varies geographically and has weakened substantially over time. **A proper "synthesis of overall findings" should have stated that the current relationship between PM2.5 and mortality is very weak in the United States and may be nonexistent in states like California.**

In addition, UC Irvine Professor Robert F. Phalen published a October 2004 peer-reviewed paper "THE PARTICULATE AIR POLLUTION CONTROVERSY" *Nonlinearity in Biology, Toxicology, and Medicine* 2004;2:259–292 (<http://www.pubmedcentral.nih.gov/picrender.fcgi?artid=2659607&blobtype=pdf>). Quotes from page 289 of this detailed 34-page paper are: "Today, we are at an important crossroad with respect to the future of air-pollutant regulation. One road involves performing the needed research and making decisions on the basis of the science, with full consideration of the many trade-offs associated with new regulations. The other road involves adopting regulations driven by public fear, politics, and pressure groups. The first road is obviously the more beneficial one for protecting human health. . . . The second approach promises uncontrolled, chaotic, and rapidly changing rules. A great deal is at stake. Will science and reason, or expediency, fear, and ignorance, be the determinants of public health decisions?"

Professor Froines has been the Director of the Southern California Particle Center since it was initiated in 1999 with \$11 million in grants to UCLA from US EPA (grant R827352) and CARB (<http://www.scpcs.ucla.edu/news/PRucla11mil.pdf>) (Attachment C). Professor Phalen was an Investigator in the Center during 1999-2005 (<http://www.scpcs.ucla.edu/publications.html>). Both the Froines and Phalen papers received funding from US EPA grant R827352. However, in spite of the claim that the 2009 *EHP* paper gives a “synthesis of overall findings,” the Froines paper does not cite the Phalen paper. I believe that the Phalen paper was not cited because it raises serious and powerful doubts about PM science and regulations associated with PM. Thus, I allege that the 2009 *EHP* paper provides further evidence of falsification by Professor Froines through **omission** of relevant findings.

Finally, Professor Froines participated in the November 30, 2007-December 1, 2007 Impact Project “Moving Forward” Conference, that was co-sponsored and partially funded by three UCLA Centers (<http://www.scribd.com/doc/562980/Impact-Project-Moving-Forward-Agenda>) (Attachment D). Page 5 of the 28-page conference program states that the first objective of the Conference is to “Share research findings from scientific studies on the health effects of air pollution on children, the elderly, workers, and others.” However, based on my examination of the entire program, I believe that this “collaboration of community and university partners” did not accurately present the current PM health effects in Los Angeles and California. Instead, I believe the conference focused on “environmental justice” in response to hyped health effects associated with diesel vehicles used in goods movement throughout Los Angeles and California.

To address my concerns, I want to know if Professor Froines or other participants in “THE LATEST HEALTH RESEARCH FINDINGS” session (page 6) presented any of the epidemiologic evidence showing NO current relationship between PM_{2.5} and mortality in California. Also, I want to know if anyone presented data from the CDC WONDER mortality database (<http://wonder.cdc.gov/cmfi-icd10.html>) showing that during 2000-2005 Los Angeles County had an age-adjusted total death rate that was 11% lower than the national rate and lower than the rate in 47 of the 48 continental states (Attachment E). Based on this evidence, I do not see any premature death crisis in Los Angeles County or California. Finally, it strongly appears that US EPA research funds awarded to UCLA may have been used to support advocacy in connection with this conference. My understanding is that Federal research funds cannot be used for advocacy. In summary, I allege that this conference provides further evidence of falsification by Professor Froines and may implicate UCLA in taking an advocacy position on this issue.

Based on his approximately 25-year membership on the CARB Scientific Review Panel, his participation in the 2007 “Moving Forward” conference, his 2008 letter recommending Professor Nichols as CARB Chair (Attachment F), and his 2009 *EHP* paper on the UCLA PM Center (to mention just a few of his efforts) I allege that Professor Froines has engaged in a clear and consistent pattern of falsification regarding PM health effects in California. Furthermore, I strongly believe that if the proper appointment process had been followed and a scientist like Professor Phalen had been Chair of the Scientific Review Panel in 1998, diesel particulate matter would never have been declared a toxic air contaminant and CARB would not have approved the current diesel regulations.

William H. Cormier

June 30, 2009

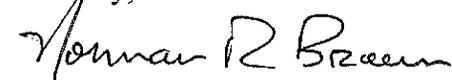
In accordance with the letter and spirit of the *UCLA Policy 993* and the *UC Standards of Ethical Conduct*, I implore you to further examine my allegations against Professor Froines. To help you in this examination, I request that you solicit the expertise of Linda Rosenstock, M.D., who is Dean of the UCLA School of Public Health (http://www.ph.ucla.edu/about_aboutdean.html). Professor Froines has his primary appointment in this school. I feel compelled to make this request because the actions of Professors Nichols and Froines have severely impacted me and thousands of other businessmen in California through what amounts to falsification of scientific studies. We now are burdened with draconian regulations that are destroying our ability to remain in business in California and that, based on our assessment of the available evidence, are not scientifically justified and are not imposed on businessmen in any other state or country. In the spirit of helping California businessmen survive and hopefully improve the California economy, I trust you will fully evaluate my allegations and the issues they raise.

Finally, in order to make sure that you understand how serious I am about this matter, I sent a detailed June 8, 2009 letter to Governor Arnold Schwarzenegger describing "California Air Resources Board's Part in Our Economic Collapse" (Attachment G). Also, I am the lead petitioner in a lawsuit regarding the CARB Scientific Review Panel, **Brown v. Adams**, which was filed in Sacramento County Superior Court on June 18, 2009 by the Pacific Legal Foundation (PLF). This lawsuit is summarized in a June 18, 2008 PLF news release (<http://community.pacificlegal.org/Page.aspx?pid=934>) (Attachment H). The entire 45-page lawsuit is posted on the PLF website (<http://community.pacificlegal.org/Document.Doc?id=305>). The nine petitioners in this lawsuit represent all affected businesses in California.

I repeat my earlier statement: sunlight is a great disinfectant and I intend to provide the light supported by research from credible and accomplished scientists. As a California businessman whose taxes have been used to fund the US EPA, CARB, and UCLA, I have the right to expect that \$11 million awarded to UCLA has been used to conduct objective research on "the uncertainties in exposure, toxicity, and health effects of airborne particulate matter (PM)." Furthermore, I have the right to expect that the scientist leading this research, Professor Froines, has objectively reported the current health effects of PM in California. I realize that my allegations may create some problems for your fine institution, but it would be a travesty to ignore this very strong evidence of a falsification (knowingly omitting data or results to misrepresent results in the research record) that is resulting in an economic calamity.

Thank you very much for your consideration.

Sincerely,



Norman R. Brown, President

cc: Dean Linda Rosenstock
School of Public Health
University of California, Los Angeles
650 Charles E. Young Drive South, Room 16-035 CHS
Los Angeles, CA 90095-1772

William H. Cormier

June 30, 2009

cc: cont'd

Chancellor Gene Block
University of California, Los Angeles
2147 Murphy Hall
Los Angeles, CA 90095-1405

Alleged Unethical Conduct by UCLA Professor John R. Froines (April 13, 2009 Letter)

John R. Froines, Ph.D., is Professor in the UCLA School of Public Health (http://portal.ctrl.ucla.edu/sph/institution/personnel?personnel_id=45492) and UCLA Institute of the Environment (http://www.ioe.ucla.edu/people/person.asp?Facultystaff_ID=75), as well as Chair, California Air Resources Board (CARB) Scientific Review Panel (SRP) on Toxic Air Contaminants (TAC) (<http://www.arb.ca.gov/srp/public.htm>). Below are two specific allegations of unethical conduct by Professor Froines. Several hundred pages are needed to fully describe these allegations, but only a few essential pages have been enclosed with this complaint. All of the pages can and should be viewed or printed from the Internet by using the weblinks contained within the text below.

1) Allegation of Falsification of Scientific Evidence:

Evidence of falsification is contained in the enclosed June 4, 2008 letter (Attachment I) that Professor Froines wrote to Senator Don Perata recommending California Senate confirmation of Mary D. Nichols as Chair, CARB (<http://www.scientificintegrityinstitute.org/FroinesNichols060408.pdf>). This letter included the enclosed Attachment on diesel particulate matter (PM) and mortality (<http://www.scientificintegrityinstitute.org/FroinesDiesel060408.pdf>). The 23 scientists that Professor Froines cited in the Attachment all agreed with the findings of CARB Staff Report on PM and premature deaths (http://www.arb.ca.gov/research/health/pm-mort/pm-mort_final.pdf). However, his letter and Attachment failed to cite a single dissenting scientist or any of the epidemiologic evidence that clearly indicates there is NO current relationship between PM and mortality in California. His sentence "While there may be a few studies that suggest a lack of evidence for the relationship, the overwhelming evidence suggests the relationship is positive" does not accurately describe the epidemiologic evidence in California. Specific evidence of falsification in the Attachment is given in the enclosed pages of scientific criticism published in the January 2009 California Transportation News "A Regulatory Fraud or a Polluted Process?" (Attachment J) (http://www.cdtoa.org/old_archives/2009/01_09/TransNewsLowResProof.pdf, pages 7-9).

Furthermore, Professor Froines failed to mention the extensive, long-term efforts to reverse the August 27, 1998 CARB declaration of diesel PM as a TAC, which was a direct result of his May 27, 1998 diesel TAC letter (<http://www.arb.ca.gov/toxics/dieseltac/combined.pdf>). Professor Froines is well aware of the intense scientific controversy regarding diesel PM because he was named as a defendant in the 1999-2006 lawsuit (Apodaca et al. v. California Air Resources Board et al.) that challenged the diesel PM TAC declaration (<http://www.scientificintegrityinstitute.org/Apodaca021706.pdf>). Also, Professor Froines is well aware that three of the 23 scientists he cited in the Attachment have published key epidemiologic research on PM and mortality that is based on the 1982 American Cancer Society (ACS) Cancer Prevention Study (CPS II) cohort database. These three scientists have refused to facilitate any form of independent reanalysis of the ACS database, in violation of the Federal Data Quality Act. For his Attachment to be objective, Professor Froines should have acknowledged that the evidence used by CARB to establish a relationship between diesel PM and mortality in California has not been independently verified and is still highly disputed, as evident in the 148 pages public comments on this relationship, that were submitted to CARB as of July 11, 2008 CARB (http://www.arb.ca.gov/research/health/pm-mort/pm-mort_supp.pdf).

2) Allegation of Failure to Follow California Health and Safety Code Section 39670.

Professor Froines has served as the toxicologist on the CARB SRP since at least 1986 and is currently up for reappointment to another three-year term. No other California toxicologist has had an opportunity to serve during this period. This is in violation of the letter and spirit of the California Health and Safety Code Section 39670, which clearly specifies that each SRP member is to be appointed for a term of three years and is to be appointed from a pool of at least three nominees submitted to the appropriate appointing body by the President of the University of California (<http://caselaw.lp.findlaw.com/cacodes/hsc/39670-39671.html>). Indeed, the selection process for all nine SRP members has not followed Code Section 39670. Information from CARB SRP transcripts and other sources indicates that all SRP members have served at least 5 years, 5 members have served at least 12 years, and Professor Froines and one other member have served at least 23 years. One consequence of this pattern of service is that the SRP consists primarily of activist scientists who are NOT representative of the diversity of all California scientists who are qualified to serve on this panel. Furthermore, Professor Froines, who has been SRP Chair since 1998, is well aware of this situation regarding SRP appointments.

Since Professor Froines first began assessing diesel exhaust as a potential TAC for the SRP in 1989, he has been the California scientist most responsible for emphasizing the adverse health effects of diesel PM and for getting it declared a TAC. This TAC declaration is primarily based on weak and controversial epidemiologic relationships between PM and deaths, not on the toxicological evidence that falls within Professor Froines' scientific area of expertise. Most experimental toxicological evidence does not support the health risks of diesel PM found in the epidemiologic studies. Furthermore, other California toxicologists disagree with Froines' assessment of diesel PM toxicity. UC Irvine Professor Robert F. Phalen has described this disagreement in his 2002 book "The Particulate Air Pollution Controversy: A Case Study and Lessons Learned" (http://www.amazon.com/gp/reader/1402072252/ref=si3_rdr_ty). Professor Phalen has run the UC Irvine Air Pollution Health Effects Laboratory for over 30 years and currently serves on the directly relevant US Environmental Protection Agency (EPA) Clean Air Scientific Advisory Committee Particulate Matter Review Panel (CASAC-PMRC) (<http://yosemite.epa.gov/sab/sabpeople.nsf/WebPeople/PhalenRobert%20F.?OpenDocument>). Furthermore, the 669-page 2002 US EPA "Health Assessment Document for Diesel Engine Exhaust" does not support the CARB finding that diesel exhaust causes premature deaths (<http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060>).

This scientific controversy is one key reason why it is important to have appointments to the SRP made in full accordance with Code Section 39670. The fact that CARB diesel regulations costing billions of dollars to implement are a direct result of a SRP TAC determination is an even more important reason why Professor Froines and other SRP members should be required to strictly adhere to all relevant provisions of California Health and Safety Code. Since thousands of California businesses are in danger of extinction because of CARB regulations that do not exist in any other state and that appear to be scientifically unjustified, the above allegations of unethical conduct should be fully and fairly evaluated in a timely manner.

News & Media

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NEWS RELEASE

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Most CARB science-panel members have overstayed their terms of office, charges PLF lawsuit

Science-panel members "aren't regulators for life," says PLF attorney; elected officials charged with appointing must stop neglecting their oversight of this CARB regulatory panel, so there will be potential for new blood and fresh perspectives.

Sacramento, CA; June 18, 2009: Most members of the scientific panel for the California Air Resources Board are serving beyond the legal limit on their terms of office, and a court should order that proper nomination and appointment of replacements take place. So argues a lawsuit filed today by Pacific Legal Foundation attorneys, representing various businesses that are subject to CARB regulations.

Filed in California Superior Court for Sacramento County, the lawsuit asks the court to order the appointing authorities – the secretary of the California Environmental Protection Agency, the speaker of the state Assembly, and the state Senate Rules Committee – to fulfill their legal duty to carry out the nominating and appointing process to replace members of CARB's nine-member Scientific Review Panel (SRP) who have overstayed their terms without being renominated.



Damien M. Schiff
 PLF Attorney

"CARB officials, including its scientific review panel, cannot be allowed to consider themselves regulators-for-life, and they are not above the law," said PLF attorney Damien Schiff. "This lawsuit aims to make sure that there is accountability in the regulatory process – accountability to the law, to the people, and to the checks and balances that are a fundamental element of democratic, representative government."

The SRP is a panel of scientific experts that must review any CARB proposal to label a substance in the air as a toxic air contaminant. Such designations are highly significant, because CARB can follow up with regulations on economic activity that generates the substance. For instance, CARB has adopted or is considering a variety of heavy-handed regulations on diesel-engine emissions – regulations that pose a severe economic threat to many businesses that use diesel trucks.

The Health and Safety Code explicitly sets a three-year term for each of the SRP's nine members. Five members are appointed by the Secretary of Environmental Protection, two by the Senate Committee on Rules, and two by the Speaker of the Assembly. All are to be appointed from a pool of nominees, with appropriate scientific and academic credentials, submitted by the president of the University of California.

However, CARB's Web site indicates that the majority of currently serving Panel members have held their positions for over a decade, and a letter to PLF from the U.C. President's Office confirms that the U.C. President has not been regularly consulted for a nominee pool and has made no nominations since 2004.

"The principle behind our lawsuit is, 'No regulation without representation,'" said PLF's Schiff. "In a democratic system, the regulators must be directly answerable if not to the electorate, then to officials who themselves are representative because they answer to voters. In the case of the scientific review panel, the lawfully designated appointing authorities are all answerable to voters – members of a Senate Committee, the speaker of the Assembly, and one of the governor's cabinet members. These officials must be ordered to fulfill their duty and provide real and active oversight of the regulatory process by putting forward new nominations for the CARB science panel, as the law requires."

"This kind of oversight is especially urgent for CARB, an agency that has become notorious for imposing regulations that threaten to kill jobs and stifle economic recovery," Schiff continued.

“It is vital that CARB and all its regulators and advisors be fully accountable to the people,” said Norman R. “Skip” Brown, president of Delta Construction Co., Inc., in Sacramento, and one of the plaintiffs in the case. “When the law requires oversight and, hopefully, new blood and fresh perspectives on a CARB panel, the law shouldn’t be ignored. Accountability is essential because CARB’s regulations have been so onerous for the California economy. For instance, CARB’s regulations on diesel engines are forcing businesses to replace perfectly good trucks and equipment – or shut down if they can’t afford to comply.”

In this litigation, PLF attorneys represent:

1. Skip Brown, president of Delta Construction Co., Inc., a Sacramento company that uses diesel trucks and equipment, and is dramatically affected by CARB regulations that limit the use of diesel-operated engines;
2. Robinson Enterprises, Ltd., a Nevada City firm involved in construction, logging, trucking, hazard material removal, and petroleum products;
3. North Bay Corporation, a refuse and recycling company;
4. California Dump Truck Owners Association, an association representing over 1,100 trucking companies and 125 affiliate members;
5. Southern California Contractors Association, a not-for-profit mutual benefit trade association;
6. Construction Industry Air Quality Coalition, a not-for-profit mutual benefit corporation that assists the construction industry and regulatory agencies in the development of environmental regulatory strategies that will balance the goals of a healthy environment and a healthy local economy with the least adverse impact on the construction industry;
7. Crane of Ukiah, Inc., a building and engineering construction firm;
8. Diamond D General Engineering, Inc., based in Woodland, CA; and
9. MHS Corporation Compaction Rentals, based in West Sacramento.

The case is *Brown v. Adams*. The complaint is available at PLF’s Web site.

About Pacific Legal Foundation

Pacific Legal Foundation is the oldest and most successful public interest legal organization that litigates for limited government, property rights, and a balanced approach to environmental regulation, in courts nationwide.



PACIFIC LEGAL FOUNDATION

July 16, 2008

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Secretary for Environmental Protection
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Sacramento, California 95812-2815

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California Senate Committee on Rules
State Capitol, Room 205
Sacramento, California 95814

Assemblyman Fabian Nunez
Assembly Speaker Emeritus
State Capitol
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on Toxic Air Contaminants
Director, Center of Occupational and
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School of Public Health CHS 21-293
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650 Charles East Young Drive South
Los Angeles, California 90095-1772

Mr. Jim Behrmann
Mr. Kirk Oliver
Air Resources Board
P. O. Box 2815
1001 "I" Street
Sacramento, California 95812

Dear Madam and Sirs:

It has come to the attention of Pacific Legal Foundation (PLF) that the manner in which current members of the Scientific Review Panel on Toxic Air Contaminants have been nominated and appointed may not comport with the procedures set forth in the California Health and Safety Code.

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Mr. Kirk Oliver
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As you know, the Code requires the Panel to be composed of nine members who are “highly qualified and professionally active or engaged in the conduct of scientific research.” These members serve for a term of three years. *See id.* § 39670(b). Five members are appointed by the Secretary of Environmental Protection, two by the Senate Committee on Rules, and two by the Speaker of the Assembly. *See id.* § 39670(b)(1)-(3). The Code also specifically provides for the nomination of potential Panel members, as follows:

Members of the panel shall be appointed from a pool of nominees submitted to each appointing body by the President of the University of California. The pool shall include, at a minimum, three nominees for each discipline represented on the panel, and shall include only individuals who hold, or have held, academic or equivalent appointments at universities and their affiliates in California.

Id. § 39670(b)(4). Thus, the Code requires, for any person who wishes to serve on the panel, that he *first* be selected by the U.C. President for the nominee pool, and that he be one of at least three individuals qualified in the discipline for expertise in which he has been nominated to serve. This process applies regardless of whether the nominee has previously served on the Panel.

Based on information posted on the California Air Resources Board’s website, PLF has determined that the majority of currently serving Panel members have held their positions for over a decade. Further, PLF understands that the U.C. President has not been regularly consulted for a nominee pool and has made no nominations since 2004. If these assertions are correct, then there are serious legal infirmities with the appointments of current Panel members. The Code does not countenance the reappointment of Panel members without a renomination process from the nominee pool assembled by the U.C. President.

Of course, if PLF’s understanding of the relevant facts is inaccurate, I would greatly appreciate your prompt correction. But if the facts are as stated above, then PLF expects the California Air Resources Board to adhere to the Code and promptly to request nominees from the

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U.C. President to replace the three Panel members whose terms end January 1, 2009. If I do not hear from you regarding this matter, PLF may have little choice but to institute legal action.

Yours sincerely,



DAMIEN M. SCHIFF
Attorney

UNIVERSITY OF CALIFORNIA

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July 24, 2008

Damien M Schiff, Esq
Pacific Legal Foundation
3900 Lennane Drive, Suite 200
Sacramento, California 95834

Dear Mr Schiff

Thank you for your letter of July 16 regarding the Scientific Review Panel on Toxic Air Contaminants (SRP) As you may know, the SRP was established by legislation (Assembly Bill 1907, Tanner, 1983) to advise the State Air Resources Board (ARB) and the Department of Pesticide Regulations (DPR) of the California Environmental Protection Agency (Cal/EPA) in evaluating the risk assessments of substances proposed for identification as toxic air contaminants by those agencies The SRP is not a University of California (UC) panel While the Secretary of Cal/EPA, the Speaker of the Assembly, and the Senate Rules Committee, who are the appointing authorities, must select SRP members from among a pool of nominations submitted by the President of the University of California, responsibility for appointments lies with those State officials

The process has been coordinated by staff within the Air Resources Board who staff the Scientific Review Panel, and who notify the University when there is a need for new or updated nominations. Our understanding is that ARB staff also coordinate with the appointing authorities, making sure they have the list of potential candidates and are aware of any vacancies You are correct that the University of California President last made nominations to the SRP in 2004, in response to a request from the staff at the ARB

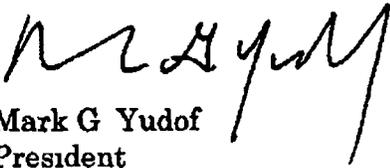
The University of California stands ready to provide updates to the pool of nominees in any category of scientific expertise in which a need arises, and we have made that clear to relevant staff in the offices of the appointing authorities and to the ARB officials who staff the SRP However, the University does not wish to usurp the authority of the legislatively-designated appointing authorities to determine whether and when there is a need to appoint new members to the SRP, and to determine when there is a need for new nominees

Damien M Schiff, Esq
July 24, 2008
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I appreciate your taking the time to write and express your views on this important matter

With best wishes, I am,

Sincerely,



Mark G Yudof
President

cc Secretary Linda S Adams, Cal/EPA
The Honorable Don Perata
The Honorable Karen Bass
Mr Jim Behrman, ARB
Provost Hume
Vice President Steven Beckwith
Associate Vice President Steve Juarez
Professor John R Fromes, UCLA



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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ARNOLD SCHWARZENEGGER
GOVERNOR

January 22, 2009

Damien M. Schiff, Attorney
Pacific Legal Foundation
3900 Lennane Drive, Suite 200
Sacramento, California 95834

Dear Mr. Schiff:

This letter is in response to your July 16, 2008 letter regarding appointments to the Scientific Review Panel on Toxic Air Contaminants.

The Panel is a technical peer review committee established in state law (Health and Safety Code section 39670) that is responsible for advising the Air Resources Board (ARB), Department of Pesticide Regulation (DPR), and the Office of Environmental Health Hazard Assessment (OEHHA) on matters relating to air toxics and risk assessments. You point out some of the statute's requirements about members' qualifications, and that members are appointed by the Secretary for Environmental Protection as well as by the Legislature from a pool of nominees submitted to each appointing body by the President of the University of California.

Scientific Review Panel members are appointed to staggered three-year terms and pursuant to Government Code section 1302 may continue to serve until they are reappointed, resign or are replaced. Accordingly, in some cases members have not been reappointed when their three year terms ended. As terms end, however, our current practice is to appoint qualified new members or to reappoint qualified current members based on their individual expertise and their ability to contribute to the Panel's peer review responsibilities. While our current and past practices are legally sufficient and have resulted in a stellar Panel, I believe your suggestion of consulting with the University of California Office of the President on reappointments as well as new appointments has merit, and we will look into implementing it. Even long term members deserve to be formally reappointed every few years. And it is always good to cultivate new talent. Nevertheless, there is no requirement that members be replaced when their three year terms expire and automatically doing so could deprive the Panel of valuable expertise.

The ARB, DPR and OEHHA rely on the Scientific Review Panel to provide objective and independent critical reviews of candidate toxic air contaminants, risk assessment guidelines, and methodologies to assure that our risk assessment procedures adequately protect infants and children where they may be more sensitive to the adverse effects of exposure to certain chemicals. Again, some of your suggestions about the appointment process may help assure the Panel's continued excellence and we will look into implementing them.

Thank you again for your suggestions. If you have any further questions, please contact Mr. Kirk Oliver of the ARB staff at 916-324-4581.

Sincerely,

A handwritten signature in cursive script that reads "Linda Adams".

Linda Adams
Secretary for Environmental Protection