



## PACIFIC LEGAL FOUNDATION

July 16, 2008

Hon. Linda S. Adams  
Secretary for Environmental Protection  
1001 "I" Street  
P.O. Box 2815  
Sacramento, California 95812-2815

Senator Don Perata, Chairman  
California Senate Committee on Rules  
State Capitol, Room 205  
Sacramento, California 95814

Assemblyman Fabian Nunez  
Assembly Speaker Emeritus  
State Capitol  
P.O. Box 942849  
Sacramento, California 94249-0046

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President, University of California  
Office of the President  
University of California  
1111 Franklin Street, 12th Floor  
Oakland, California 94607

John R. Froines, Ph.D.  
Chairman, Scientific Review Panel  
on Toxic Air Contaminants  
Director, Center of Occupational and  
Environmental Health  
School of Public Health CHS 21-293  
University of California, Los Angeles  
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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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