

LAWSUIT OVER SCIENCE PANEL AIMS TO SHAKE UP ARB DIESEL POLICIES

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Construction firms and industry groups are suing Cal/EPA Secretary Linda Adams and lawmakers to force the appointment of new members to a scientific review panel (SRP) that advises the air board. Industry officials hope the litigation will force Cal/EPA to appoint new members to the SRP who would consider revising controversial scientific decisions about diesel pollution and its health impacts.

Industry groups argue in the suit that members of the SRP have served on the panel for longer than allowed under law, and that scientists who have challenged the SRP's findings have been unfairly excluded from the nominating and appointment process.

But Cal/EPA and air board officials say the appointment process has followed the law.

The lawsuit follows disputes last year between the Air Resources Board and industry groups over the adoption of two significant and costly diesel emission rules. Some University of California (UC) scientists and industry officials have also challenged the SRP's assumptions about the negative health impacts that diesel emissions pose to Californians.

A successful legal challenge to the SRP appointment process detailed in the lawsuit could have implications for the future of ARB diesel regulations and the board's pursuit of strict diesel regulations in general.

The law firm Pacific Legal Foundation, on behalf of several construction firms and industry groups, June 18 filed a lawsuit in Sacramento County Superior Court. The suit calls on the court to order the Cal/EPA secretary, the Assembly speaker and the Senate Rules Committee to replace SRP members as required under state law.

The nine-member SRP is charged with advising ARB and the pesticides department on the health impacts of pollutants. The panel declared diesel particulate matter (PM) to be a "toxic air contaminant" in 1998. The decision was controversial, with scientists clashing over the studies used to come up with the decision and their conclusions about the true health impacts of PM.

ARB has cited the decision in launching and justifying a number of major regulations targeting diesel PM, including the controversial adoption of "off-road" and "on-road" diesel rules in 2007 and 2008, respectively. The off-road rule largely targets construction equipment, while the on-road rule targets diesel trucks on the roads and highways. Both regulations are expected to be among the costliest ever adopted by ARB.

The plaintiffs in the June 18 lawsuit include the Construction Industry Air Quality Coalition and Southern California Contractors Association, two of the industry groups that opposed ARB's rulemakings.

The lawsuit argues that the majority of SRP members have held their positions for over a decade, despite the fact that state law sets a three-year term for each of the nine members. *A copy of the lawsuit is available at InsideEPA.com.*

Some UC professors and industry officials have argued that the SRP appointment process has deliberately blocked qualified scientists from being selected because their research on PM conflicts with ARB's aggressive diesel regulatory agenda.

Under law, five members are appointed to the SRP by the Cal/EPA secretary, two by the Senate Rules Committee and two by the Assembly speaker. All SRP members are supposed to be appointed from a pool of nominees with scientific and academic backgrounds, according to the lawsuit. This pool of candidates is supposed to be submitted to Cal/EPA by the UC president.

A Cal/EPA spokeswoman declined to comment, saying officials were reviewing the lawsuit at press time.

Industry attorneys last year first warned ARB and Cal/EPA officials in a letter that the lack of new appointments to the SRP may be a violation of state law. The attorneys raised the same argument that the majority of current SRP members have held their positions for over a decade and that the UC president has not been regularly consulted for a "nominee pool" and has made no nominations since 2004.

But ARB Chairwoman Mary Nichols responded in a letter last year to UC scientists and industry officials that SRP members need not be replaced when their three-year terms expire. Instead, SRP members can continue to serve until they are reappointed, resign or are replaced, Nichols argued.

Adams made the same argument in a letter earlier this year to industry officials, saying "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."

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