

CAL/EPA EYES CHANGES TO SCIENCE PANEL DESPITE LEGAL BACKING IN CASE

Date: October 9, 2009 -

Cal/EPA Secretary Linda Adams is calling on the University of California (UC) president to submit a pool of scientists to be nominated for appointments to the agency's Scientific Review Panel (SRP) and for one member to not be reappointed. The move follows recent outcry and a lawsuit by industry groups that argue some panelists have served many years longer than the law allows. Industry groups have also argued that Cal/EPA and lawmakers have unfairly blocked certain scientists from serving on the panel because their research conflicts with the panel's findings on the health impacts of diesel pollution.

Adams' move comes despite a recent opinion by the Office of Legislative Counsel that backs Cal/EPA and lawmakers in the litigation, which concludes that the lawsuit should be dismissed because the appointment process has followed the law and courts cannot compel the Legislature to act regarding appointments.

The dispute over the SRP appointment process and the related litigation could have implications for the future of Air Resources Board diesel regulations and the board's pursuit of tougher diesel rules in general. The litigation in question follows disputes last year between ARB and industry groups over the adoption of two significant and costly diesel emission rules. Some UC scientists and industry officials have also challenged the SRP's assumptions about the negative health impacts that diesel emissions pose to Californians. The economic recession has also reinforced industry arguments against the diesel rules and the SRP process.

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.

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. This pool of candidates is supposed to be submitted to Cal/EPA by the UC president.

Adams in a Sept. 9 letter to UC President Mark Yudof states that the terms of three SRP members have expired; therefore, Cal/EPA requests Yudof to submit a pool of nominees to fill these positions.

Cal/EPA is not opposed to a possible re-nomination of two of the panelists whose terms have expired. However, one of them, Dr. Gary Friedman, should be omitted from the pool of candidates since he has served for the past 20 years, the letter states. “We believe that advisory committees benefit from the expertise of new members, and we recognize that maintaining diversity on the SRP is of utmost importance.” *A copy of the letter is available at InsideEPA.com.*

Adams’ letter reflects a shift in Cal/EPA’s position regarding the SRP appointment process. In a letter to industry officials earlier this year, Adams argued that there is no requirement that SRP members be replaced when their three-year terms expire, and automatically doing so could deprive the panel of valuable expertise.

ARB Chairwoman Mary Nichols has also stated 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.

A Cal/EPA spokeswoman did not immediately respond to requests for comment by press time.

Industry groups this summer filed a lawsuit against Cal/EPA and lawmakers, arguing 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 Sacramento County Superior Court judge is scheduled to hear the case in December.

The Office of Legislative Counsel, which serves as the Legislature’s legal office, in late August submitted a legal opinion to the court that backs Cal/EPA’s and lawmakers’ SRP-appointment process. The office contends that the relief sought by industry groups in the lawsuit is “simply unavailable” because the separation of powers doctrine under law prohibits a California court from compelling a lawmaker to exercise legislative functions, including appointments. *A copy of the legal opinion is available at InsideEPA.com.*

Legislative counsel adds in the opinion that if industry groups disagree with actions taken by the SRP, “their recourse is to seek to influence new appointments through the political process, not through the courts.”

An industry attorney did not immediately respond to requests for comment by press time.

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