

DIESEL PM ANALYSIS MAY SPARK SUIT OVER SCIENCE PANEL APPOINTMENTS

A revised air board report estimating how many premature deaths in California are caused by diesel particulate matter (PM) exposure may prompt some University of California (UC) scientists and industry groups to sue the state over how officials appoint scientists to a panel overseeing the report.

Some scientists argue that Cal/EPA officials and lawmakers have blocked qualified researchers from sitting on the panel and have ignored their research because it challenges notions about negative health impacts of PM exposure in the state.

But the Air Resources Board has defended the panels work on diesel pollution, and Cal/EPA Secretary Linda Adams is expected to soon weigh in on the appointment process, according to sources.

The criticism over the science panels appointment process and the revised PM report could become more controversial because the panels opinions often drive Cal/EPA agencies -- especially ARB -- to develop aggressive rules designed to protect public health.

ARB Oct. 24 released its final report, Methodology for Estimating Premature Deaths Associated with Long-term Exposure to Fine Airborne PM in California. The report describes the association between PM and premature death in the state. *A copy of the report is available at InsideEPA.com.*

The reports release comes as ARB is poised in December to consider for adoption a controversial regulation to cut diesel PM emissions from most diesel trucks in the state. The rule is one of the costliest in ARBs history.

The Oct. 24 report includes revisions made in response to public comments received this summer on a first draft, according to a Nov. 3 e-mail statement by ARB to stakeholders. The revisions to the premature death methodology were developed after ARB staff reviewed all relevant scientific literature and held two public workshops earlier this year, ARB staff said in the statement.

Based on a new PM risk factor, ARB staff estimates that exposure to PM 2.5 contributes to about 18,000 premature deaths statewide annually, according to the latest report.

But some UC scientists and industry representatives, such as engine manufacturers, earlier this year ripped the first draft of the report for concluding that premature deaths are higher than previously thought, and challenged the science used to reach the conclusion.

These same researchers now argue that the revised draft report still has ignored research that disputes the increase in premature death estimates. They argue that California-specific studies showing that PM emissions have decreased over the past several years have largely been ignored in the final report.

They also argue that the appointment process for Cal/EPAs Scientific Review Panel (SRP), which advises ARB on the health impacts of pollutants, has deliberately blocked qualified scientists from being selected because their research on PM conflicts with ARBs aggressive PM regulatory agenda.

The nine-member SRP declared diesel PM to be a toxic air contaminant (TAC) 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 a number of rulemakings targeting diesel PM.

Under state law, the Cal/EPA secretary is required to appoint five members to the SRP, the Senate Rules Committee appoints two members, and the Assembly speaker appoints two members. Members can serve three years on the SRP under the law. SRP terms are staggered so that terms of three members expire each year, according to the law.

Jim Enstrom, a UC-Los Angeles epidemiologist, argued at an ARB meeting earlier this year that his study looking at 11 California counties and PM impacts was omitted from most of the first draft of the report. His major study suggested that the PM problem in California is not nearly as severe as thought.

Enstrom also challenged the SRP-appointment process at a legislative hearing earlier this year, arguing that lawmakers and Cal/EPA officials are ignoring the appointment process spelled out in state law. He cited the fact that some members of the SRP have served on the panel for more than 20 years, and that other scientists had been locked out of consideration.

Enstrom said this week that the Oct. 24 report still fails to incorporate his and others research questioning the health impacts of PM in California. Studies of PM impacts outside California were prioritized by ARB and the SRP over California-specific studies showing less of a health impact, Enstrom argued. *Copies of comment letters on the report are available at InsideEPA.com.*

As a result, scientists and industry groups that disagree with the report may challenge in court the SRP-appointment process.

Enstrom said he is also in discussions with ARB staff about his options going forward, which may include a petition challenging the 1998 TAC decision.

In a July letter to lawmakers, ARB and Cal/EPA officials, attorneys with the Pacific Legal Foundation (PLF) argued that the manner in which SRP members have been appointed may not comply with the Health & Safety Code. PLF argued 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.

ARB should adhere to the law and promptly request the UC president to nominate new scientists to replace three SRP members whose terms expire Jan. 1, 2009, the letter states. PLF may have little choice but to institute legal action.

A PLF source said this week that the group has been in contact with ARB attorneys, who have informed PLF that Adams is expected to formally respond to the PLF concerns in the near future.

Based on Adams response, PLF would then confer with those disappointed with the SRP-appointment process to decide whether legal action should be taken, the PLF source said.

ARB Chairwoman Mary Nichols in a July letter to Enstrom responded 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.

She also defended the first draft of the PM report, arguing that ARBs approach to assessing PM health impacts is consistent with U.S. EPA and World Health Organization methodologies.

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