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September 28, 2009

PERSONAL & CONFIDENTIAL

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

Re: Your June 30th Letter; Allegations of Unethical Conduct by Two UCLA Professors

Dear Mr. Brown:

This responds to your June 30th letter with attachments concerning your allegations of research and ethical misconduct by UCLA Professors Mary Nichols and John Froines that you had first raised in your letter of April 13, 2009. In my May 27th letter I informed you that UCLA had concluded that your concerns raised public policy issues only and not issues of potential research misconduct.

Your June 30th letter contained additional information, and you requested a reconsideration of the position previously communicated to you. In addition to my phone conversations with you, I have discussed your concerns with UCLA Vice Chancellor for Research Roberto Peccei, UCLA's Research Integrity Officer, and with UCLA School of Public Health Dean Linda Rosenstock, to whom you had sent a copy of your material. I regret the delay in formally responding to you, but as I had previously indicated, and confirm for you now, UCLA's position remains unchanged.

Your Concerns

Your concerns with Professor Mary Nichols arise in connection with her service as chair of the California Air Resources Board (CARB) and with Professor John Froines in connection with his service as chair of the Scientific Review Panel that advises CARB. You describe Professor Froines as having "played a major role" in designating diesel as a toxic air contaminant and in emphasizing the adverse health effects of diesel particulate matter on Californians. You assert that under the specific direction of Professor Nichols and Froines CARB has "excluded or attempted to diminish any data that conflicts with their agenda." You claim that Professors Nichols and Froines are most responsible for the diesel emission regulations which you regard as costly and unjustified. You identify ten prominent physicians and scientists, including two other faculty researchers from UCLA and one from UC Irvine that have submitted public comments to CARB expressing opinions which you assert are consistent with your concerns.

As in your April 13th letter, you attempt to find support for your allegations in UCLA Policy 993 (Responding to Allegations of Research Misconduct) and a portion of the definition of "falsification" from that policy which refers to ". . . changing or omitting data or results (your emphasis), such that the Research is not accurately represented in the Research Record." You assert that "THIS IS EXACTLY WHAT HAS BEEN DONE" (again, your emphasis), claiming that under the direction of Professors Froines and Nichols "CARB has excluded or attempted to diminish any data that conflicts with their agenda."

You also express your strong belief that your claims should also be considered as allegations of unethical conduct under the UC Standards of Ethical Conduct, quoting from the Fair Dealing standard that members of the University community "are expected to conduct themselves ethically, honestly and with integrity in all dealings . . . both inside and outside the community" and from the Ethical Conduct of Research standard that those engaged in research are not to ". . . knowingly omit data or results to misrepresent results in the research record . . ." (your emphasis).

You purport to identify such "falsification" in the work of Professor Froines by referencing a paper he co-authored in the February 2009 volume of the *Environmental Health Perspectives* journal, a Southern California Environmental Health Sciences Center conference in which he participated in December 2007, a letter he wrote recommending the appointment of Professor Nichols as CARB chair which included as an attachment citations to scientists supporting a CARB staff report but, you assert, no mention of dissenting information, and, lastly, you fault him for his long tenure on the Scientific Review Panel which you assert violates California law. Your allegations against Professor Nichols are less clear. You assert serious misconduct generally but do not provide any specific allegations.

As stated in my previous reply to you, the arguments you present serve to document an ongoing scientific dispute that exists with respect to the health effects of diesel particulate matter in California. The information you have provided of this controversy, though credible, does not constitute evidence of scientific misconduct by Professors Froines or Nichols under any of our research integrity policies or the more general standards of ethical conduct you cite.

Applicable Standards

UCLA takes allegations of research misconduct seriously. As we have discussed, UCLA has a detailed process for evaluating research integrity issues. UCLA's policy is consistent with the applicable federal standards from which the terms and definitions in our policy are derived. Under these generally accepted standards, research misconduct is defined as falsification, fabrication, or plagiarism in the specific research record of a researcher.

In accusing Professor Froines of "falsification of scientific evidence," you cite the definition of falsification in our policy as "changing or omitting data or results, such that the Research is not accurately represented in the Research Record." Then you provide what you believe is evidence that Professor Froines has not properly credited or weighed the research of others or has overlooked other "dissenting" views, hypotheses or data explanations, or has sought to "diminish any data" that conflicts with his views, assuming that such examples constitute falsification under the policy definition. However, as defined in our policy, "Falsification" is concerned with what is contained in the "Research" and "Research Record" – the researcher's

actual record of data or results, measurements, or observations, etc., resulting from the experimentation, demonstrations, evaluations, or surveys that are recorded in laboratory records, logs, and notes and are reported in the research papers, journal articles, or scientific presentations of the researcher.

Falsification is concerned with the scientific work of the researcher and is not concerned with the researcher's characterizations of the research of others, their hypotheses, theories, conclusions or interpretations of the data. A researcher has complete freedom in criticizing, reinterpreting, dismissing, or simply ignoring the work of other researchers. What a researcher cannot do is change, alter, fabricate or fail to report his own research results presented in support of his published research.

None of the examples you cite represent instances or evidence that Professor Froines changed, omitted, or otherwise falsified data in his published research or research records. Instead, you fault Professor Froines for failing to take proper account of the research findings of others and/or for not acknowledging or properly weighing such work. Even in that your criticism is not focused entirely on specific publications of Professor Froines but appears to include his actions as Scientific Review Panel chair, tending to attribute the recommendations of the full Scientific Review Panel to Professor Froines alone.

The University's principles of academic freedom, which are applicable here, do not distinguish between "interested" and "disinterested" scientific research, but differentiate instead between "competent" and "incompetent" research. A researcher is free to advance whatever scientific theories or hypotheses he chooses to advance, or to reach whatever conclusions, including public policy recommendations, he chooses to reach, whether or not such conclusions are perceived as "neutral" or "objective," provided that the researcher does not falsify, fabricate, or plagiarize the data on which such hypotheses or conclusions are based. If certain hypotheses or conclusions appear weak, unsupported by the data, or ignore more significant data or more competent research of other scientists, it is the responsibility of the community of researchers to challenge such conclusions and to propose more reasonable hypotheses. That is how science advances.

New Evidence of "Falsification"

The points made in my May 27th letter remain fully applicable and there is no need to restate them here. However, with respect to the additional information and arguments made in your June 30th letter concerning possible falsification of research data and your reference to the University's more general standards of ethical conduct as related to the same point let me briefly note the following.

You mention an article published in *Environmental Health Perspectives*, where Professor Froines is listed as one of eight co-authors who represent the five academic centers, one at UCLA, that have been funded by the Environmental Protection Agency to study the health effects of airborne particulate matter (PM). The article is intended to describe selected accomplishments of the several centers. It includes a section with the heading "Life shortening associated with exposure to PM" which you claim is misleading in its brief review of the results of several research papers. You also fault the article and Professor Froines for failing to mention a research paper by a UC Irvine professor, presumably done under the sponsorship of the UCLA

Particulate Matter Center, because the research paper, in your view, raises serious doubts about PM science and regulations associated with PM. You may be correct in your assumptions that the article is misleading in certain respects and that the omission of the UC Irvine research paper was deliberate, but neither circumstance provides evidence of falsification of research data or in any other way constitutes research misconduct by Professor Froines.

Regarding the December 2007 "Moving Forward" conference, at which Professor Froines was one of a number of presenters, you express your belief that this "collaboration of community and university partners" did not accurately present the current PM health effects in California. You ask whether any contrary epidemiological evidence was presented at the conference and speculate whether EPA funds awarded to UCLA may have been used to support "advocacy" in connection with the conference. Without referring to any specific statements or claims purportedly made by Professor Froines at the conference you assert that the conference provides further evidence of falsification by Professor Froines and may implicate UCLA in taking an improper advocacy position on the issue. However, you have not provided any evidence of falsification by Professor Froines of his research data, and your other allegation is vague and unsupported by any credible evidence.

In the attachment to your letter wherein you refer to a June 2008 letter from Professor Froines to California Senator Don Perata recommending Senate confirmation of Professor Nichols as CARB chair, you fault Professor Froines for failing to cite a single dissenting scientist among the 23 other scientists he identifies in the letter as supporting CARB findings and for failing to mention extensive efforts to reverse the CARB declaration concerning diesel PM. Again, however, you have not provided any evidence of falsification of research data by Professor Froines. This is a letter recommending an appointment and advocating a regulatory position; it is not research. There is nothing improper in Professor Froines advocating a regulatory position. Professor Froines is entitled to present his view of the weight of the relevant evidence, even if other qualified scientists may characterize the evidence quite differently and even if his views are ultimately determined to be incorrect. This is not evidence of research misconduct.

With respect to your concern that Professor Froines has served on the CARB Scientific Review Panel for over 20 years which you believe violates a requirement of Health and Safety Code Section 39670 stipulating that each Scientific Review Panel member be appointed to a three-year term, I previously pointed out to you that you should be directing such concerns not to UCLA but to the appointing authorities, the California Secretary for Environmental Protection, the California Senate Committee on Rules, and the Speaker of the California Assembly. It is to be noted that there does not appear to be any provision in the statute that would prevent a member from being reappointed to subsequent three-year terms. In any event, whether or not the appointing authorities have followed their own rules, Professor Froines has not done anything improper with respect to his continued appointment as a member of the Scientific Review Panel.

Lastly, none of your allegations of research misconduct can be fairly directed to Professor Nichols, if that is what you meant to imply in your arguments. (It is noted that your June 30th letter does not contain any new allegations against Professor Nichols.) As you know, Professor Nichols is not a scientist and has not published scientific research on the health effects of diesel PM. Criticism you wish to make of her performance as chair of CARB in appearing to favor one

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side of the debate over the other or in weighing certain scientific studies over others raises a public policy concern only that can be directed to the CARB appointing authority or, more generally, to the legislature. In any event, her conduct does not raise a research or ethical misconduct issue under our policies.

I acknowledge the difficult circumstances facing you and your industry as a result of the CARB regulations. I am not qualified to express a view on the underlying science of diesel PM but can appreciate the potential economic impacts to all Californians that you have described. Nevertheless, the fact that a public body like CARB may choose to rely on certain research or research results and discount or ignore other research or research results raises a public policy concern only. Concerns you have about the public policy decision-making process being followed by CARB should be directed to Sacramento.

I have appreciated the opportunity to discuss this matter with you personally. I have concluded that your concerns and the information you have provided are not evidence of falsification of research results or other research or ethical misconduct that would warrant any further inquiry under University policy.

Sincerely,



William H. Cormier
Director

cc: Chancellor Gene Block
Vice Chancellor, Research Roberto Peccei
Dean Linda Rosenstock