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LOIS HENRY: Cozy emails undermine air czar's integrity

By Lois Henry

When you set yourself up as an independent reviewer of facts, a judge essentially, it's best not to cozy up to one side of a debate coming before you.

In fact, that might be considered unethical, even illegal, in some instances. Certainly, it's a breach of propriety, or even just flat embarrassing.

But not, apparently, to John Froines, a little-known but key figure in the world of air contaminant regulation in Californian.

A string of emails from 2009 into 2010 show he had very friendly ongoing relations with anti-pesticide activists when he was under contract to head an independent scientific committee looking at methyl iodide, a controversial soil fumigant up for registration by the Department of Pesticide Regulation (DPR).

The methyl iodide controversy is long since over and you might wonder why I care. I actually don't care about methyl iodide. Its maker, Arysta LifeSciences, pulled it from the market in 2012, so it's a non-issue.

But I do care about, and take issue with, Froines as he is still the chair of the Scientific Review Panel deciding which substances are toxic air contaminants that need regulation.

Meaning, he's still a supposedly independent reviewer of fact.

The 2009/2010 emails, however, show he's anything but independent.

One email in particular sums it up.

In July 2009, Froines' assistant writes to an activist that Froines supports lobbying then-Gov. Arnold Schwarzenegger against OKing methyl iodide for use.

"But that we have to remain behind the scenes at the moment. John has to protect his position as chair of the review committee for the time being," Froines' assistant wrote.

That was two months before Froines' committee had its first hearing.

I've written about Froines before and said he operates from a personal agenda, not science.

These emails put that in concrete for me.

This may all seem like insider baseball. But it's important because the regulations spawned under Froines' stamp of approval affect all of us on a daily basis.

Such as not being able to light a fire on a cold winter night and having to pay more for produce brought by trucks that have had to undergo expensive retrofitting to reduce the amount of particulate matter in their exhaust.

These are just a few outcomes of Froines' work.

Once his panel decrees a substance as a "toxic air contaminant," that gives the California Air Resources Board (CARB) free rein to come up with regulations to reduce that contaminant to extinction or thereabouts.

Froines has immense power, which is why I like to keep tabs on his doings.

The emails I detail below came to me from an anonymous tip. They were first requested from UCLA, where Froines was a toxicology professor before retiring in 2010, by Arysta. I piggybacked on Arysta's request and received them separately. Neither Arysta nor its attorney returned calls for this story.

Arysta only asked for communications between Froines and activist groups, not between Froines and pesticide industry folks. I have asked UCLA for any industry/Froines emails but haven't yet received a response.

Back in 2009/2010, as I said, Froines was named in a contract between the Department of Pesticide Regulation and the University of California to head a special scientific review committee to look over a risk assessment of methyl iodide produced by DPR.

That was in mid-March 2009. The review committee would not hold its first hearing until late September 2009.

In early April 2009, Susan Kegley, a consulting scientist for Pesticide Action Network, sent Froines emails asking him to review and comment on a letter to the federal Environmental Protection Agency by Bob Bergman, a UC Berkeley chemistry professor, protesting the EPA's registration of methyl iodide.

"Bob and I would appreciate your read on the tone and content of this letter to see if you see anything else in there," she writes.

Then on April 29, 2009, she writes to Froines again, attaching DPR's methyl iodide risk assessment -- the very document Froines is contracted to look over as an impartial scientist.

"MeI (methyl iodide) exposures exceed levels of concern for many different scenarios, particularly for bystanders," Kegley writes and includes a summary by another person who adds that he doesn't see how DPR can approve methyl iodide.

Remember, Froines hasn't even scheduled the issue for a hearing. Hearings by Froines' panel were being touted at the time as truly transparent so the public could trust there was no undue influence.

The emails continue through July with Kegley alerting Froines to a possible lawsuit by one or more environmental groups, political infighting in the governor's office, the then-secretary of Cal/EPA Linda Adams' feelings about whether the governor would allow methyl iodide to be registered.

In one email dated July 3, 2009, to Froines, Froines' assistant Elinor Fanning, Kegley gives an update from Anne Katten with California Rural Legal Assistance. Katten states a DPR scientist and another scientist believe the governor is "bowing to industry pressure" and methyl iodide registration may be through.

Kegley's comment to Froines and Fanning about this update is: "PROBLEMS!!! We are working on this here, but wanted to give you a heads up. Whatever you can do from that end would be welcome."

A few days later is when Fanning sends the email to Kegley saying Froines supports efforts to lobby the governor against methyl iodide but has to remain behind the scenes.

DPR OK'd methyl iodide for use in December 2010 and was promptly sued by EarthJustice. In February 2010, Froines' review was released to the public.

It recommended vehemently against the registration and Froines was famously quoted as saying methyl iodide was "one of the most toxic chemicals on earth."

He told the Monterey County Weekly two years later he was proud that his panel focused on science and didn't allow politics to interfere.

"You can't have science without integrity," he said in the March 29, 2012, article.

He didn't mention the many email and private phone conversations (alluded to in the emails) he had with activists during that time.

Interestingly, there are very few "sent" emails from Froines himself during the run up to his panel's report. And the UC produced no emails at all for the months between Sept. 25, 2009, the date of Froines' first hearing on methyl iodide, and Feb. 8, 2010, a few days before his report was

released. (See side bar).

Froines didn't return repeated phone calls nor respond to an email in which I sent him all the records I had received from UCLA. And Fanning, no longer with UCLA, didn't respond to a Facebook message.

Kegley did speak with me briefly and initially tried to characterize the emails simply as "chemist to chemist" chats.

I explained that's not what the records I had reflected.

She paused and said, "Well, John didn't respond to those emails," which was a very interesting thing to say.

I would have loved to discuss that with her further, but after that short conversation, she never called me back, nor responded to my email in which I sent her all the documents I had.

Likewise, the UC president's office wouldn't comment.

And DPR Chief Deputy Director Christopher Reardon, who is mentioned in the 2009 emails, would only give me an email statement saying: "Any activity that would undermine or corrupt the integrity of the peer review process would be of concern to the Department."

OK, well do these emails show relationships and access that undermine or corrupt the review panel's integrity?

No one I contacted would say.

Well, I'll say: Yes.

The integrity of the panel is absolutely undermined when one side has that kind of access.

Just like DPR's integrity was undermined when internal memos were discovered during the methyl iodide lawsuit that activists said showed Arysta may have had undue influence on DPR scientists.

The memos were splashed far and wide as "smoking guns" in which risks to human safety were downplayed at Arysta's nudging. Some scientists even quit DPR over it.

The public good is never served when the playing field is tilted.

That goes for both sides.

As for Froines, he should take his own advice about science and integrity,

Related Info

UC hits new low in withholding public records

Two letters from the University of California, Los Angeles legal team to an Arysta LifeSciences' attorney explaining why the university felt it didn't have to release more emails from UCLA professor John Froines almost left me speechless.

I've seen a lot of tortured legal reasoning for withholding public information, but this was a truly brazen disregard for the law.

Arysta made its initial request for Froines' emails starting in July 2010.

The company, via its attorney Robert Schuda, then went back and forth with UCLA arguing that none of Froines' "sent emails" were released and there was a four-month gap, from September 2009 to February 2010, where no communications at all were released.

Schuda first complains about the lapses in July 2011 and receives a letter back from Kevin Reed, vice chancellor of legal affairs at UCLA, on Aug. 4, 2011.

Reed says he personally asked Froines for his sent emails and, whaddaya know, Froines said he didn't have them. And, Reed says, the university doesn't have a duty to search "back up systems" because those systems are only for disaster recovery so anything on them isn't a public record.

Well, that makes zero sense. It was a public record, then it wasn't because it went to a back up system? Sheesh.

Schuda complains again to UCLA in a letter dated Aug. 15, 2011, and receives a reply dated Feb. 10, 2012. (Yeah, our tax dollars hard at work there, huh?)

Among the reasons the sought-after emails are being withheld, Senior Campus Counsel L. Amy Blum, Esq. writes, is that "email communications that are wholly personal in nature...do not relate to conduct of university business and, thus, are not 'public records.'"

'Scuse me? Uh. No. The email system used by the UC is paid for by the taxpayers and subject to the California Public Records Act, silly UC policy or not.

And by the way, Froines' email, just like every other professor and administrator, is listed in public directories for public use. There's no question that it's a public email system.

Oh, but Blum goes on.

She invokes "academic freedom" and the need for profs to yap it up on email free from prying eyes and that such confidential musings are essential to the university's mission.

She even claims the First Amendment protects emails from disclosure and that keeping them under wraps is a greater service to the public than revealing their contents.

Seriously, if I hadn't looked her up on the California Bar Association's website, I wouldn't have believed Blum was a real lawyer.

Even the government codes she cites as upholding her position were wrong, noted Jim Ewert, counsel for the California Newspaper Publishers Association.

"This is the first time I've ever seen a public university cite the First Amendment to allow it to withhold otherwise disclosable documents," he said, adding that the policies and practices asserted by Blum violate the state constitution and statutory law on a number of levels.

Here's hoping UCLA does a little better on its next public records act request.

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