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CONSTRUCTION CO., INC.

August 26, 2009

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Re: External Review of Methyl Iodine Risk Assessment by John R. Froines, Ph.D.

Dear Director Warmerdam and Dr. Patterson:

Although I have no personal expertise in or business interest related to methyl iodide, I have been following this regulatory issue. I am writing to protest the fact that your risk assessment of methyl iodide is undergoing external review by a panel of experts headed by toxicologist John R. Froines, Ph.D., of UCLA (<http://www.cdpr.ca.gov/docs/pressrls/2009/090729.htm>). I am one of the thousands of California businessmen who have been adversely impacted by draconian California Air Resources Board (CARB) diesel regulations that originate from the May 27, 1998 identification of diesel exhaust as a toxic air contaminant by a similar panel of experts headed by Dr. Froines (<http://www.arb.ca.gov/toxics/dieseltac/combined.pdf>).

In my efforts to deal with these diesel regulations, I have assembled substantial evidence that the Scientific Review Panel (SRP) on Toxic Air Contaminants (TAC), lead by Dr. Froines, did not fully and fairly evaluate all the available scientific evidence regarding diesel toxicity. Consequently, the 1998 identification process exaggerated the health effects of diesel exhaust on Californians. Furthermore, Dr. Froines has continued to exaggerate diesel toxicity in spite of substantial new evidence that diesel exhaust, specifically diesel particulate matter, is not harming Californians.

Based on the way that he led the SRP evaluation of diesel toxicity, I believe that Dr. Froines will conduct a biased external review that is likely to exaggerate the toxicity and environmental effects of the fumigant methyl iodide in California. Further, I believe that a biased external review will hurt agriculture and the economy in California, much the same way that the biased assessment of diesel toxicity has hurt trucking and contracting in California. To support my beliefs I provide below extensive evidence challenging the toxicity of diesel exhaust as portrayed by Dr. Froines.

The SRP transcripts of March 11, 1998 (<http://www.arb.ca.gov/srp/mt031198.htm>) and April 22, 1998 (<http://www.arb.ca.gov/srp/mt042298.htm>) and the CARB transcripts of July 30, 1998 (<http://www.arb.ca.gov/board/mt/mt073098.txt>) and August 27, 1998 (<http://www.arb.ca.gov/board/mt/mt082798.txt>) clearly document the extensive controversy regarding diesel toxicity that existed during those meetings.

The controversy that existed during these 1998 meetings has never ended and there have been continual legal challenges regarding diesel toxicity as identified by the SRP. An unsuccessful July 2, 1999 petition to CARB was followed by an unsuccessful December 23, 1999 lawsuit against CARB. These were followed by the 2000 Apodaca et al. v. CARB et al. lawsuit, which culminated with the February 17, 2006 decision favoring CARB (<http://www.box.net/shared/v5vmnio51n>). These efforts to overturn or reassess the classification of diesel exhaust as a TAC failed. However, they provided substantial evidence that the SRP risk assessment lead by Dr. Froines was flawed and highly contentious. Regardless, the damage was done and so far irreversible as to the economic consequences to Industry.

Furthermore, the subsequent 2007 CARB off-road diesel regulations (<http://www.arb.ca.gov/regact/2007/ordiesl07/ordiesl07.htm>) and 2008 CARB on-road diesel regulations (<http://www.arb.ca.gov/regact/2008/truckbus08/truckbus08.htm>) have been highly contested, with several hundred very critical public comments on file. Major on-going challenges to CARB regulations include those by the Pacific Merchant Shipping Association ([http://www.gensteam.com/news/PMSA\\_complaint.pdf](http://www.gensteam.com/news/PMSA_complaint.pdf)), the Associated General Contractors of America ([http://www.agc.org/cs/industry\\_topics/environment/petition\\_for\\_diesel\\_retrofit](http://www.agc.org/cs/industry_topics/environment/petition_for_diesel_retrofit)), the American Road and Transportation Builders Association (<http://www.artba.org/mediafiles/regulatorydec172008pdf.pdf>), and the Construction Industry Air Quality Coalition ([http://www.arb.ca.gov/lists/truckbus08/929-on-road\\_truck\\_regulation\\_-\\_ciaqc\\_comments\\_to\\_carb.pdf](http://www.arb.ca.gov/lists/truckbus08/929-on-road_truck_regulation_-_ciaqc_comments_to_carb.pdf)). The proposed and enacted regulations portend extensive economic consequences based on a flawed and biased assessment by the Scientific Review Panel in 1998 led by Dr. Froines.

Finally, the Pacific Legal Foundation filed a June 18, 2009 petition challenging the appointment and reappointment process for SRP members (*Brown v. Adams*). I am the lead petitioner and the eight other petitioners represent thousands of California businessmen. The notice for the lawsuit (<http://community.pacificlegal.org/Page.aspx?pid=934>) is attached and the full 45-page lawsuit itself is available at the following address (<http://community.pacificlegal.org/Document.Doc?id=305>). The AB 1807 legislation establishing the SRP in 1984 and the resulting California Health and Safety Code clearly specify that SRP members are to be appointed for three year terms. However, the majority of SRP members have served for over 10 years and Dr. Froines has served for 25 years. Consequently, many other highly qualified California scientists have not been able to serve on this panel and diverse scientific viewpoints regarding diesel toxicity have never been considered. Indeed, the SRP may not have been legally constituted when it identified diesel exhaust as a TAC in 1998.

In summary, substantial scientific evidence contradicts the 1998 SRP conclusions about diesel toxicity; numerous challenges to CARB diesel regulations are on-going, and the new PLF

petition raises major issues about the legitimacy of the SRP. Given this situation, Dr. Froines should not be allowed to participate in the DPR external review of methyl iodide. There are many distinguished California toxicologists who could conduct an objective review of this pesticide. I submit that a prudent decision would be to select one of them to replace Dr. Froines for this review. Please let me know if you have any questions or would like any further information related to this matter.

Thank you very much for your consideration.

Sincerely yours,



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