

February 17, 2010

California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

CARB'S HOUSE OF CARDS

When I spoke at the Board Meeting on January 26, 2010, you asked me for a written statement. I did not have time to prepare one for that meeting, but have found time prior to the February 26, 2010 meeting to discuss the science. I believe that you will find this information timely and cogent for that meeting.

Credibility n. Worthy of belief or confidence, a capacity for belief.

The "Tran" scandal visibly damaged CARB's credibility. The CARB needs to restore it before implementing **any** program. Some of the other issues damaging credibility are outlined in this brief.

- **CARB states "a rigorous independent scientific peer review was conducted prior to the report's release"¹ and that 9 out of 10 reviewers still stand behind the report:**

HOWEVER: 6 of the 10 (Arden Pope, Bart Ostro, Jonathan Levy, Joel Schwartz, Joel Kaufman and Mark Eisner) have clear conflicts of interest because their research is cited in the report and they have professional and economic ties with CARB.

- **CARB places a great weight on Federal EPA's Expert Elicitation:**

HOWEVER: "... of the 12 experts, six are co-authors of these studies, meaning they were giving their expert opinion on their own research"²

We know by CARB leadership's admission that the expert panel members did not review the public comments. CARB staff reviewed the comments by public experts opposed to

¹ James Goldstene Letter to the Board dated October 27, 2009

² Joel Schwartz Letter to the Board dated July 11, 2008

the study and its conclusions. It is clear that the experts did not write any responses to the scientific criticisms; the responses were written by in-house staff, some with no significant epidemiology or toxicology expertise (like the lead author who had a store-bought PhD).

Incestuous n. Improperly intimate or interconnected.

What's up with that?

There is an unavoidable relationship of dependency between CARB and EPA, since EPA sets policy in many areas of environmental regulation. However that should not negate or diminish the responsibility of CARB to assure the citizens of California that EPA sponsored science and science based policy making is appropriate for California and generally reliable and competent. EPA guidance on air regulations should be reliable and derivative of competent and verifiable human effects science before acceptance by CARB.

The CARB should avoid the appearance of an inappropriate incestuous relationship by conducting scientific and policy inquiries that protect the interests of the citizens of California. Failure to independently and reliably evaluate EPA sponsored science results in a double dose of unreliable science, Federal and State. Such a failure is evidenced by the inadequacy of the science offered by CARB to justify the proposed new regulations on small particles as criticized in the public comments, and also the failure of CARB to respond adequately to the scientific objections.

The researchers who wrote the studies used to promulgate regulations on Particulate Matter (PM) were inappropriately chosen as reviewing experts, or in some cases the reviewers were close associates and working colleagues of the authors of the reports cited. The appearances and reality of conflicts of interest compromise the scientific integrity of the CARB's reports and claims of public health effects and declarations of conclusions and proposed regulations. The conduct of the CARB compromises public confidence.

- **John Froines has serious conflicts of interest as a Board Member and Chair of the SRP:**

John Froines, Center Director of UCLA's School of Public Health, was appointed in 1984 to the Scientific Review Panel (SRP). In 1998, after being re-appointed for a 3-Year Term, and as Acting Chair of the SRP, declared diesel PM being a Toxic Air Contaminant (TAC). In 1999, \$11.2 million of State and Federal funds was awarded to UCLA for John Froines, still Center Director, to study air pollution in South Coast. In accordance with the Tanner Act, John Froines, as Center Director for UCLA's School of Public Health, then reports the methodologies and procedures used in the "study" to the SRP for verification by SRP Chair, John Froines! Additionally, as late as 2009, John Froines is still Chair of SRP, 25 years later. The appearance is of third world cronyism.

Ethics n. The body of moral principles or values governing actions.

What's up with that?

Do we have an “ethics” issue here? At a minimum, there is definitely the appearance of impropriety and a serious conflict of interest. Public servants should not be allowed to financially benefit from grants that they directly or indirectly control. Additionally, the legislature set up three-year rotating terms to insure a cross section of qualified individuals to serve on this Board and prevent the development of cozy and compromising relationships. The rotation of members of a review board is intended in any organizational statute to assure new members to avoid the development or the appearance of conflicts of interest, cronyism and corruption of objectivity and impartiality. Lifetime appointments like the Froines appointment smack of tin pot third world kleptocracies.

Individuals elevated to state-wide positions such as these must be encouraged to maintain integrity. The fact that membership was not rotated corrupted those who knew of or took advantage of the failure to follow the rotation rules. That taints the stature of the members and the panel and the effect began as soon as proper rotation was ignored. There is no member of the Panel who can claim ignorance of the rotation rules.

Failure to rotate compromised the objectivity and impartiality of the members, resulting in loss of reliable scientific analysis and inquiry for the past two decades, and beginning in the first cycle of memberships that were not properly vetted and reappointed under the statute.

- **The SRP Epidemiologist Gary Friedman, appointed in 1988 for a three year term is still on the expert review panel for CARB, although his last appointment was in 1991. No appointments have been made for an epidemiologist since then. The CARB and the state of California have been subject to one person's opinions on the validity of critical epidemiology for 20 years—that is captivity not anticipated by the rule of rotation written into the statutory language or any sensible rule of scientific inquiry.**

What's up with that?

All of the studies used to promulgate regulations are epidemiological studies. The position held for 20 years by Dr. Friedman is the most important post on the SRP because public health studies depend on reliable epidemiology. Moreover, toxicological epidemiology studies are essential to air pollution policy-making. For example, if Dr. Friedman was doing his job competently he would have insisted on geographical carve-outs to determine effects of air pollutants in California if that data was available.

- **Studies used by CARB to support small particle regulations are nationwide and CARB has ignored California specific studies or California data from the national studies, available easily from the studies.**

- **Any qualified epidemiologist should require studies to be population specific when available and would require the CARB inquiry to focus on California specific data.**

All California specific studies (six independent sources) show no current relationship with diesel PM and any premature death in Calif. The very small death effect from the PM studies nationwide is in the eastern United States and the rust belt mid west, but not in the west, not in California.

Why does CARB discount these specific studies showing no effect of small particles on disease? Why does the CARB in its reviews focus on the small particle air pollution studies that are nationwide, when it has been informed of the lack of effect in California?

The CARB was irresponsible in its continued insistence on a designation of diesel small particles as a TAC on the basis of studies by Garshick that showed very small effects and particularly when Garshick specifically and personally admonished the CARB Expert Panel in 1998 not to misuse his data and declare diesel as a TAC? Since then, CARB has been careless in its failure to distinguish small particles from diesel small particles and equally careless in its failure to account for the imprecision of the definition of small particles in the studies relied on.

Small particles only describe a size, and not the character of the particle, which creates significant uncertainty on the toxicity—talcum powder and weaponized anthrax look alike, for example. Dust from the high desert is not the same as small particles in industrial areas. Is CARB self-serving and intentionally sloppy in the handling of such matters?

More recent studies on small particle pollution effects by Pope, Jarrett, and Krewski, fly in the face of the conclusions of the CARB panel. They show downward trends in health effects in the last half of the CPS study (Pope) that were not properly vetted by CARB and no particle death effect in the western United States and California (Krewski, Samet and Jarrett).

What's up with that?

California is the fourth healthiest state in nation (as measured by premature death rates) according to the Center of Disease Control (CDC).

No other state nor any nation has designated diesel PM as a TAC.

Where is the health necessity that demands PM or diesel PM regulations in California?

In fact, in this round of scientific review CARB didn't even revisit the diesel small particles issue, and there are no timely studies that deal with effects of current diesel emission that are significantly mitigated from the past. By focusing on studies of generic small particles, can the CARB claim it has provided a proper scientific review at all on

diesel or generic small particle air pollution effects? Is CARB, sans science, sans common sense, just pounding the table and scaring the public? Seems so.

- **CARB won't release California specific data.**

Numerous requests have been made by Industry and others requesting CARB to release California specific data used to justify regulations. CARB counters with such comments as, "it's not our data", and "there are privacy issues". CARB is both fostering and depending on "**Trust Me Science**". The studies that are used by a state or federal agency for policy making should always be subject to freedom of information release of data, and the rules that are derivative of the state and federal research integrity statutes, must be open to review and meet the Daubert tests of testability, error rate, peer review and general acceptance with the scientific community. The Federal Administrative Procedure Act and the Data Quality Act would necessarily apply to EPA sponsored and referenced research, which is the research used by the CARB in this review.

- **CARB ignores the Krewski, Pope and Enstrom null effects.³**

The Enstrom Study (Inhalation Toxicology 2005) concludes that there is no death effect from PM in California. Additionally, the Pope ACS second half data results confirm the Enstrom Study. Along with this is further confirmation of no effect on the Krewski map and the Health Effects Institute Study of 2000.⁴

What's up with that?

Why is CARB touting the health effect indications on national studies, with the predominate effects being in the mid-west and east, while ignoring null effects on California Specific Studies? Are we not talking about Californians breathing California air?

The privacy of individuals is not in jeopardy when data from an epidemiology study is properly reviewed. The objection by CARB is just an excuse for a failure to cooperate with the impartial and objective evaluation of data and methodology inquiry. The data can be screened to eliminate privacy and if the researchers cannot supply the data for verification by the public and other scientists, the studies fail the test of peer review and verification. Papers where the data is not public should not be allowed in the discussion, nor used for regulation. Agencies that do this are at risk for being arbitrary, capricious and abuse of discretion.

- **CARB inexplicably and conveniently ignores results when including co-pollutants yields results at odds with its position.⁵**

³ John Dunn, MD JD Letter to the Board dated June 23, 2008

⁴ John Dunn, MD JD Letter to the Board dated June 23, 2008

⁵ Suresh H. Moolgavkar, Draft Staff Report, May 22, 2008

“For example, the CARB ignores the results of the Krewski re-analysis of the original ACS study, which shows quite clearly that it is SO₂ and not fine PM that is associated with mortality (even the admittedly very low mortality effects) in joint pollutant analyses.”⁶

Court decisions across the United States in state and federal courts always have provided for adequate review of the validity of the scientific evidence presented.

The *Daubert vs. Merrill Dow* US Supreme Court opinion in 1993 reaffirmed the importance of good science in the courtroom which applies to the law. In that opinion the Supreme Court also asserted the role of the trial court judge as gatekeeper for good science, assuring the relevance, materiality and applicability of the evidence under the normal rules of admissibility, but also the reliability and the veracity of the scientific evidence and testimony under four rules of scientific reliability—testability, peer review and publication, rate of error, and general acceptability.

A 1972 decision of the Texas Supreme Court concluded: “Data on which expert opinion is based is not available to examine” is not acceptable.⁷ CARB’s reasoning is faulty in Texas, the nation and California since the only way under the rules of a court to assess the relevance and reliability of the scientific evidence is examination and proper inquiry, the testability first rule of Daubert.

Why does CARB consistently ignore studies that conflict with their positions? Is it because the Political Agenda is set and the CARB staff and apparently the Board do not consider inconvenient things like a lack of good evidence? An example of non scientific, political motives is regulation mandated regardless of confounding by co-pollutants in Cities outside of California, which clearly would make any claims that PM was the culprit in health effects invalid in California. Again, CARB is acting arbitrary and capricious and definitely abusing its discretion.

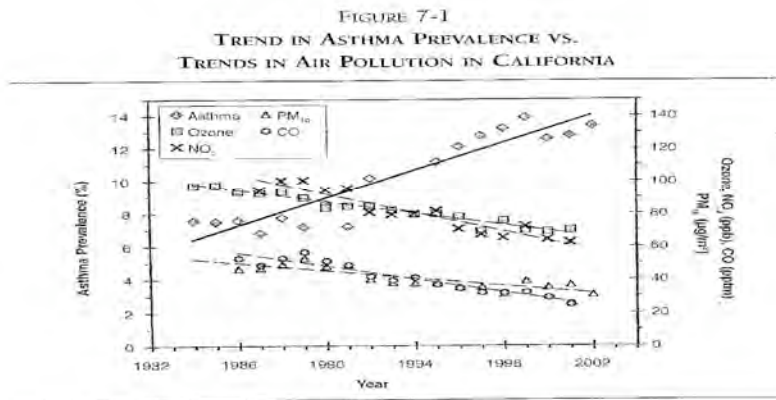
- **Asthma rates continue to rise while the air gets cleaner:**

The worst areas of Los Angeles exceeded the 1-hour ozone standard more than 150 days a year in the 70’s and early 80’s. By 2007 it was under 25 days a year. For PM, Riverside CA PM_{2.5} declined 58% from the 1980’s to 2006. But between 1980 and 1996, asthma rates rose 75%, and nearly doubled for children.⁸

⁶ Suresh H. Moolgavkar, Draft Staff Report, May 22, 2008

⁷ *Lewis v. Southmore Savings Ass’n*, 480 S.W.2d 180 (Tex. 1972)

⁸ AIR QUALITY IN AMERICA by Joel Schwartz and Steven Hayward, 2007



Assemblyman Roger Niello, in his letter to CARB (containing 52 co-signers) received the following response, in part: “There are approximately 4,500 premature deaths and over 71,000 cases of asthma and lower respiratory illness in California each year associated with on-going exposure to diesel exhaust.”⁹

What’s up with that?

The above chart shows an inverse relationship between air quality and PM? Certainly asthma can’t be used to justify NOx, Pm and ozone controls. Why does every public missive issued by CARB continue to blame the increase of asthma on NOx and PM when there does not appear to be any relationship between air quality and the incidence of asthma?

- **CARB claims direct toxicological evidence of harm from PM at real-world ambient levels.**

The study CARB used (Sun, et al, 2005) claimed to have discovered a direct relationship between PM 2.5 and heart disease. “In fact, the Sun et al.’s study had nothing to do even with real mice, much less with people. Sun et al. used mice genetically engineered to be lacking a blood lipid/cholesterol regulation system. These mice had 14 times the cholesterol levels of normal mice.”¹⁰

What’s up with that?

No human being has cholesterol greater than four time’s average, much less 14. In fact, no form of ambient PM other than viruses, bacteria and biochemical antigens has been shown to cause disease or death at concentrations remotely close to US ambient levels.¹¹ More pounding the table to scare the public?

⁹ Air Resources Board Letter to Roger Niello dated November 3, 2009

¹⁰ Joel Schwartz Letter to the Board dated July 11, 2008

¹¹ Green and Armstrong, “Particulate Matter in Ambient Air and Mortality: Toxicologic Perspectives,” *Regulatory Toxicology and Pharmacology* 38 (2003): 326-35

- **Recent Associated General Contractors of America (AGC) Study shows the off-road diesel fleet has met CARB’s PM targets through 2014 and NOx targets through 2025 due to the economic downturn and resultant elimination of equipment. Nothing needs to be done to the remaining engines at this time, yet CARB continues with requirements for installing diesel emission controls and replacing engines on equipment owned by large fleets that continue on schedule previously set by March 1, 2010.¹²**

What’s up with that?

AGC originally in December, 2008 formally petitioned the State of California to reconsider or repeal standards set by CARB due to economic, technical and environmental concerns. The CARB ignored the petition for one year. Following this “patented CARB non-response” to AGC’s study showing the targets met, AGC filed an “Emergency Petition for a Two Year Extension of Deadlines” on January 11, 2010.¹³ This emergency petition requires CARB to respond within 30 days. Exactly 30 days later, on February 11, CARB issues a statement forestalling “enforcement” on the regulation “until further notice”. Where does this leave Industry? Industry has shown it met the goals, yet CARB by this notice shows it intends to stick with the regulatory language at some unknown date?

The CARB set goals to meet using assumptions that have proven to be wrong. Industry studies show the goals are met without any changes in what’s left of the existing fleet for at least two years and possibly longer. Under what justification does CARB demand the expenditure of money or retirement of equipment to meet a schedule of improvement that was set from assumptions about usage that no longer applies and when the targets are already met?

- **Legal standards for evidence will de-legitimize the CARB studies and put future CARB policy positions at risk for litigation.¹⁴**

And

- **“The fact that causality has not been established”¹⁵**

Under the Federal Reference Manual Chapter on Epidemiology, proof of causation of disease or death must, as a minimum, have a relative risk (RR) of 2 (100% increase in effect). The highest relative risk CARB can show is 1.048 (95% CI) on Pope 1995. Follow up studies by Pope (2002) shows a RR of 1.021(the risk is dropping over time). Note that a RR of 1.00 is no effect. Two to four percent above no effect is hardly evidence that supports proof of causation, whether it be premature death (these studies) or some other effect claim, like asthma or pulmonary or heart disease.

¹² AGC of America; “A Fresh Look” study dated December 3, 2009

¹³ Morrison/Foerster Letter dated January 11, 2010

¹⁴ John Dunn, MD JD Letter to the Board dated June 23, 2008

¹⁵ John Heuss, Alliance of Automobile Manufacturers Executive Summary dated July 11, 2008

CARB studies are “wink and nod” studies that are published by journals that ignore the rules on causation because these studies never show the necessary effect of a RR of 2 or greater. Smoking cigarettes causes a 1000 percent increase in risk of cancer of lung, a lifetime death risk of 10 %- that’s an RR of 10. No epidemiologist has the luxury of finding such effects any more, since the planet earth is a very safe place.

However the CARB would not thrive if the public knew the earth was safe—they must create panic and concern to maintain their handsome budgets. So 2 % premature death rates are published as meaning something, when they mean nothing, and are easily the product of random data blips. Journals (dealing with small effects studies as the only studies available) just change the rules, the funding for more studies is renewed, the budgets continue to grow, and the public is none the wiser.

What’s up with that?

Should California ignore this well written and documented Reference Manual on Scientific Evidence, (2nd ed., Federal Judicial Center, 2000), that features chapters written by nationally known scientists and lawyers?
www.fjc.gov/public/home.nsf/pages/610?

Just possibly, the guidance of the manual was composed by and sponsored by leaders of the judiciary for a reason. In the case of the guidance on a rule to prove causation for observational studies found on page 384 that requires a RR of 2, it is because observational studies are notoriously unreliable and not replicable—that means test them again and you can’t verify the results. So you need to be careful to find a robust effect before claiming some toxicity.

The rate of lack of replication for observational studies in medicine is 80% (Ioannidis, JAMA, 2005) to over 90% (Young National Institute of Statistical Sciences, www.niss.org/sites/default/files/Young_Safety_June_2008.pdf). This failure to replicate in observational studies has been well-known for over 20 years (Feinstein, Science, 1988). Just how does CARB expect to use studies that do not meet testability, by not supplying the data so the study cannot be replicated? Talk about abuse of discretion!

It means the observational studies that CARB relies on are known by their nature to be unreliable and any claimed effects are even more problematic when the study reports a small effect.

Under what justification can CARB use to impose such onerous and extensive regulations as they propose for this next round of air pollution rules, when *not one study relied on by the CARB panel and staff and reported out as supporting CARB policy meets the minimum rules to be submitted as evidence of causation of health effect in a Federal Court?*

California CARB and the US EPA have similar rules and clearly are subject to Federal Court Jurisdiction on regulatory science and policy making, given the close relationship of state and federal agency environmental activity.

California follows formally and informally Federal Rules of Evidence and common sense science and law policy on admissibility of science. The rules on admissibility or the rules on scientific validity between the states and the federal courts are essentially the same. California courts are aware of the *Daubert* approach to scientific evidence and the role of the judge as gatekeeper to assure good and reliable scientific evidence. Courts play the role of assuring reliability and relevance of all evidence, including scientific evidence, before allowing that evidence to be admitted.

Federal EPA mandates (and the science that supports those mandates) for clean air (as used by CARB for additional rationale for regulation) and CARB reliance on EPA sponsored and funded science and policy making ultimately place any challenges or disputes about CARB regs in State and/or Federal courts, following the same general principles of scientific evidence admissibility to be tested by objective standards as outlined in *Daubert* and other dicta. Since CARB uses EPA science and policy, State court might be only a stopping point on deciding the right forum to challenge EPA sponsored and funded science and policy making.

What would CARB or the EPA use for justification of policy making when the studies are thrown out as inadmissible for failure to follow rules on causation for observational epidemiological studies? Up to this point there has been a decided failure to recognize the rules on causation, but the past is not the future. Scientific reputations have been seriously damaged by the scandal on climate science, closely related to this air pollution environmental science scandal, both ignored by CARB and CAL EPA policymakers. A competent epidemiologist on the SRP would have vacated all such studies prior to any regulatory action by CARB.

“The proper answer is that the science is not settled, there are too many studies that show no effect, and the small effects and small relative risks are proof of nothing in the contest of observational studies”.¹⁶

Here’s a thought. Why not just flip a coin to determine causation? At least there, the odds are 50-50? That’s a whole lot better than the 5% “testability” shown in epidemiological studies referenced in the Young National Institute of Statistical Sciences, www.niss.org/sites/default/files/Young_Safety_June_2008.pdf

CARB’S RESPONSE TO THE EXPOSURE OF “DR” TRAN:

- **CARB issues FACTOIDS to show cause for regulations:**

CARB issued “FACTOIDS” following the Dec ’09 meeting after agreeing to redo the Tran report, apparently intended to run cover for hiding the scandal from the Board along

¹⁶ John Dunn, MD JD Letter to the Board dated June 23, 2008

with standing by the Tran report and CARB policy decisions. The factoids pertain to PM regulations and air pollution. The below is typical of the thirteen “FACTOIDS” issued:

“Each year in California, diesel PM contributes to up to 24,000 premature deaths and thousands of hospital admissions, asthma attacks and other respiratory symptoms.”

Amazing. The Tran report stated 3,500 deaths annually. Now we are killing 24,000 people with diesel PM! Moreover, the Tran report has no diesel small particle studies, since they are not available. The only diesel PM studies are limited to occupational exposures, not general population exposures. The Tran claim of 3,500 deaths annually is based on a national premature death effects from studies no longer pertinent because of changing air quality and not pertinent to California because they are derived from death data that pertains to the Eastern and Midwestern United States, not the Western United States and California. In addition, sulfur content was reduced to 15 ppm June 1, 2006 rendering all previous epidemiology studies obsolete.

My desk dictionary provides the following definition:

FACTOIDS n **Something fictitious or unsubstantiated that is presented as fact, devised especially to gain publicity and accepted because of constant repetition.**

Is this an admission of exactly what is going on here? Should the CARB apologize for being a propaganda outfit rather than a public agency? Is CARB intentionally hyping the issue to “scare” the populace into accepting what amounts to the largest business-destroying regulation (along with the highest regressive taxation on the public)¹⁷ ever implemented over a non-event that is claimed based on non-science?

Are there **any deaths from any studies** attributing deaths to California diesel PM that pertain to California air? **No!** But even if there was such a study, California diesel PM is different now than it was 10 years ago, which would make that study invalid.

How can there be “approximately 4,500 premature deaths in November, 2009¹⁸ and 24,000 (FACTOID) deaths in December, 2009? How can PM cause “thousands of hospital admissions” when the air continues to get cleaner while hospital admissions rise? If PM was a “cause”, then, by the nature of PM being reduced, asthma rates should go down, not up!

There has been a tirade of unsubstantiated claims publicized by CARB before and since the implementation of regulations. Now, CARB has admitted it is a FACTOID FACTORY, and FACTOIDS are emblematic of the CARB propaganda program intended to gin up public support with scare tactics.

WHAT SHOULD CARB AND CAL EPA DO IN THE MIDST OF THIS SCIENTIFIC SCANDAL?

¹⁷ Delta Const Letter to the Board “Outcome of CARB Regulation” November 25, 2008

¹⁸ Air Resources Board Letter to Roger Niello dated November 3, 2009

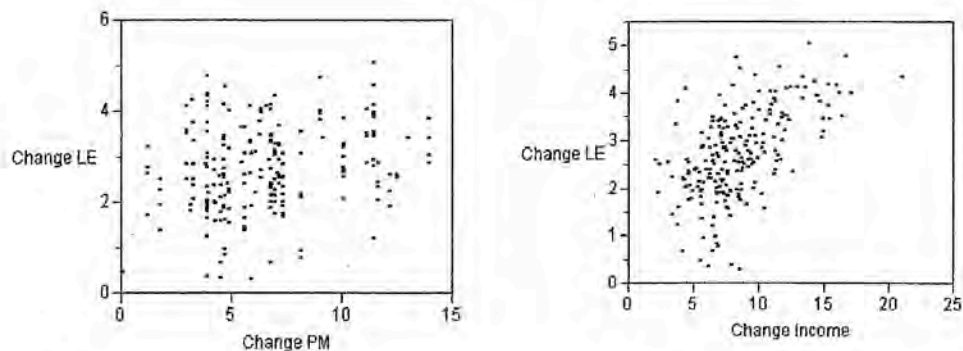
The stink of climate science scandals is soon to become a stink that permeates the air pollution science and policy making. Can CARB survive a scandal on climate and air pollution science, and attempt to implement new air pollution and carbon control regs in the face of these scandals? Should it even try or insist that the legislature revisit the commandments and supervise an impartial and objective review of the climate and air pollution human effects research?

Even though CAL EPA and CARB can count on energetic support from fanatic but uninformed segments of the California public on almost any recommended environmental regulation, can it afford such a luxury as ignorant popular support? Would it be right for CAL EPA and CARB to take advantage of the public when, if the public finds out, they will be outraged? Those in the public who don't know of the Climate Science scandal and this "**Pollution-Gate**" assume CARB and CA EPA would do the right thing. What if they found out they had been betrayed--what would that do to public confidence in the agencies and the science?

REAL HEALTH RISKS IGNORED BY CARB:

A well known effect of economic hardship and economic recessions and depressions is human health effects as a result of poverty and deprivation, which are caused usually by underemployment or unemployment. The effects of economic deprivation are well known and real, not "assumed" effects. The below chart shows the Mortality Associations with PM2.5 and income.¹⁹

Mortality Associations with PM2.5 and Income



Data from Pope CA, Ezzati M, Dockery DW. (2009)
 Fine-particulate air pollution and life expectancy in the United States.
 New England Journal of Medicine 360, 376-386.

¹⁹ Data from Pope et al. NEJM (2009) personal communication to S.S. Young young@niss.org.

This 2009 study shows, at best, a modest (if any) improvement in life expectancy with a decrease in PM2.5. The increase in life expectancy with an improvement of income shows a dramatic change. The income chart was derived from the same data used by Pope et al. **Health and the economy are directly related.** With a vibrant economy, people eat better, have less stress and there are resources to deal with problems. This fact cannot be ignored. The difference between a trivial gain in the air quality through draconian regulation (which at today's ambient levels cannot be proven to cause a single health issue) and the devastation of health from the loss of a job is substantial.

CARB has it exactly backwards! There are real causes of negative health effects and premature deaths and one that is undeniable is UNEMPLOYMENT! Give up on the "twin bogeymen", PM and NOx. Stop chasing ozone, which has no proven negative health effects at all.

The extirpation of engines that emit higher levels of pollutants will come about through a healthy economy. While waiting for this economy to recover, consider that **parked engines do not emit anything**, and, as a result, don't require any emission controls. Businessmen who are profitable will purchase new equipment for financial and productivity reasons. New equipment doesn't break down or cause loss of production, thereby securing higher efficiency necessary for competitiveness. There is no need for regulations. Business models that work improve the environment and produce prosperity. Those that don't cease to exist. Successful businesses employ workers and provide for an increasing tax base that supports government activities, such as the CARB. Onerous fines and regulations kill businesses, reduce tax revenues and in the end, only serve to destroy the State.²⁰

The CARB has a serious and deserved credibility problem, caused by (in part);

- Incestuous relationships of "experts"
- Unethical behavior of SRP Chair
- Lack of following stated governmental appointment requirements
- Ignoring of California specific studies showing no relationship of PM or NOx to health issues
- Refusal to release data used to make decisions, no independent oversight.
- Disregarding relationships of co-pollutants
- Lack of any relationship of air quality to asthma occurrences
- Reliance on poor animal models for predicting human toxicology
- Rejecting the studies that don't support CARB claims
- Lack of any admissible and valid evidence of causation in any study used to date
- Overlooking ample evidence that at least one program's goals (off- road) has been met, and
- Refusal to allow alleviation of requirements to those who have met the goals.

The CARB has ignored its mission as manager and guarantor to the public of good public health and environmental effects science.

²⁰ Delta's Letter to Governor Schwarzenegger, "CARB's Part in our Economic Collapse" June 8, 2009

The CARB has become a propaganda mill and no longer deserves the trust of the citizens.

The CARB continues to disregard contradictory testimonial from quite lucid and erudite scientists, some of which are noted in this document.

The CARB has ignored the claims of potential serious economic consequences that have been outlined to you by the affected Industries over the last several years.

The CARB cannot regain credibility by ignoring compelling issues brought up by scientific studies, experts, Industry Associations and businessmen, all of which disagree with the premise that ambient diesel smoke in our air causes any health issues, much less death.

The CARB cannot discount the real economic consequences projected by business and industry experts with retorts that amount to poorly framed and sophomoric staff opinions, none of which have ever signed the front of a paycheck.

The CARB must at some point abandon its agenda or it will fail and be dismantled, either via legislative efforts, lawsuits or economic consequences of mandates.

The CARB staff and leadership are California citizens too, and our insolvent State will not recover if CARB arrays itself as an enemy of California people and business, the basis for the great California economy and success.

CONCLUSION:

CARB's "House of Cards" has no science foundation and will necessarily fall. The only question is when.

You cannot regain credibility by ignoring compelling issues outlined above. At some point, your program will fail, either via legislative efforts, lawsuits or economics. In the meantime, our insolvent State will not recover as you destroy businesses and the employment (read, taxes generated) which are necessary for a government to function.

CARB officials and staff must return to reality, before their once excellent credibility goes down the drain with Michael Mann's now infamous "hockey stick" chart of global temperatures. Government does not make a society; government is dependent on society. If CARB destroys businesses and employment diminishes, even the comforts of California Government Sinecures will evanesce.

The air in California is considerably cleaner than 30 years ago, and it happened for various reasons (local and state actions were important). CARB caused regulations to be implemented that have improved air quality, but the society cleans up its environment for many reasons, not just because of agency conduct.

Engine and fuel improvements have reduced emissions. However no reasonable regime should destroy customary operating engines that were perfectly legal when purchased. Mandates to destroy current inventories of engines are onerous and economically unreasonable (not to mention in violation Article 5 of the U.S. Constitution). Inventory aging will eliminate less efficient and higher emitting engines which are replaced with new as reasonable restocking and reinvestment allows. Industry has offered numerous options, all of which were discounted by CARB with justification.

Currently there is no rational reason to attack the business and industry community of California, which is inactive and non productive. The CARB should pray for an economic recovery, because implementation of regulatory plans in the pipeline will kill what is left of many economic sectors, with less chance of recovery. Companies will leave California to the bureaucrats, who will push paper in a State that has lost its drive train.

When the economy crashes (as it has now) trucks and equipment are parked (like mine are today). Men are idle and worried. There is little or no work. Look at the streets and highways of Sacramento or any California City area; pollution is not the problem, it's the lack of economic activity. If leftist politicians would claim to be progressive, to avoid being called liberal, then it is time for them to consider that progress is made with the sound of a diesel truck humming down the road taking things from here to there or on the way to a job. People that make things and make things happen are what makes progress, not "iPhones" and chatter and paper pushing. The service economy has to be built on the production economy. White Collar work is derivative, not primary, even if it is profitable and comfortable. Ignore the guy with a hammer, torch, shovel, trowel or wrench at your peril and the peril of your society. Diesel engines and dirty hands make things happen.

If CARB and CA EPA stand down and puts away the clipboards and the obstinate, aggressive attitude, the result would be a win-win for California. A stronger economy will continue to provide a cleaner environment, a healthier populace and an increasing tax base that might allow a return of financial soundness (providing that some common sense appears in fiscal policies at that other White Building in downtown Sacramento). To continue on the same path, ignoring the wisdom and warnings of those with whom you disagree, will doom California's financial health **along with the health of the populace.** CARB's House of Cards must fall, one way or the other.

The business cycle cannot be stopped but it can be aggravated. CARB has made this down-turn worse with aggressive anti-business activities. Just knowing that older diesel equipment will not be legal to own or sell in California has devalued it to junk, regardless of condition or usefulness.

Business and industry must survive for future employment and a chance for economic prosperity for California. California cannot ignore the reality that it is a "farming and industrial place" and **that fact makes it function.** Cities and bureaucrats in California surely better not kill the industrial and business goose, or they will be cutting down on their lifestyles. Blue Collar California makes White Collar California what it is; don't bet

against the importance of diesel engines. Everything that you use or purchase, from gasoline to groceries, is brought to you in diesel trucks on highways built by off-road, diesel equipment from farms and factories relying on diesel engines.

Some of the enviro's need to get out of their jammies and smell the coffee. California is on hard times and more hand wringing about silly and cobbled together environmental and public health risks is going to finish off the California dream that my father and his generation built after the Depression. I want to be the part of bright future for California, not a slide into whiny mediocrity that comes from killing business and industry and pretending we are some kind of welfare, post industrial hippie commune.

California should still be a place where hard work is rewarded. For everyone.

Economic recovery for California comes from the bottom up: construction, farming, industry, logging, transportation, and production. Engines make that happen. CARB and CA EPA can't be anti-business and anti-industry and expect the State of California and its citizens to have a decent hope for a future life. The California dream is on life support, and the environmental movement can pull the plug if it doesn't get real. And with that, goes our health.

Sincerely,

Norman R. "Skip" Brown
President
Delta Construction Co., Inc.

CC:
Members of the Board

Governor Arnold Schwarzenegger
Senator Darrell Steinberg
Senator Dave Cox
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