

## News & Media



### NEWS RELEASE

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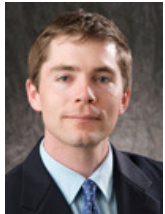
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#### **Most CARB science-panel members have overstayed their terms of office, charges PLF lawsuit**

*Science-panel members "aren't regulators for life," says PLF attorney; elected officials charged with appointing must stop neglecting their oversight of this CARB regulatory panel, so there will be potential for new blood and fresh perspectives.*

**Sacramento, CA; June 18, 2009:** Most members of the scientific panel for the [California Air Resources Board](#) are serving beyond the legal limit on their terms of office, and a court should order that proper nomination and appointment of replacements take place. So argues a [lawsuit filed today by Pacific Legal Foundation](#) attorneys, representing various businesses that are subject to CARB regulations.

Filed in California Superior Court for Sacramento County, the lawsuit asks the court to order the appointing authorities – the secretary of the California Environmental Protection Agency, the speaker of the state Assembly, and the state Senate Rules Committee – to fulfill their legal duty to carry out the nominating and appointing process to replace members of CARB's nine-member Scientific Review Panel (SRP) who have overstayed their terms without being renominated.



*Damien M. Schiff*  
 PLF Attorney

“CARB officials, including its scientific review panel, cannot be allowed to consider themselves regulators-for-life, and they are not above the law,” said PLF attorney Damien Schiff. “This lawsuit aims to make sure that there is accountability in the regulatory process – accountability to the law, to the people, and to the checks and balances that are a fundamental element of democratic, representative government.”

The SRP is a panel of scientific experts that must review any CARB proposal to label a substance in the air as a toxic air contaminant. Such designations are highly significant, because CARB can follow up with regulations on economic activity that generates the substance. For instance, CARB has adopted or is considering a variety of heavy-handed regulations on diesel-engine emissions – regulations that pose a severe economic threat to many businesses that use diesel trucks.

The Health and Safety Code explicitly sets a three-year term for each of the SRP's nine members. Five members are appointed by the Secretary of Environmental Protection, two by the Senate Committee on Rules, and two by the Speaker of the Assembly. All are to be appointed from a pool of nominees, with appropriate scientific and academic credentials, submitted by the president of the University of California.

However, CARB's Web site indicates that the majority of currently serving Panel members have held their positions for over a decade, and a letter to PLF from the U.C. President's Office confirms that the U.C. President has not been regularly consulted for a nominee pool and has made no nominations since 2004.

“The principle behind our lawsuit is, ‘No regulation without representation,’” said PLF's Schiff. “In a democratic system, the regulators must be directly answerable if not to the electorate, then to officials who themselves are representative because they answer to voters. In the case of the scientific review panel, the lawfully designated appointing authorities are all answerable to voters – members of a Senate Committee, the speaker of the Assembly, and one of the governor's cabinet members. These officials must be ordered to fulfill their duty and provide real and active oversight of the regulatory process by putting forward new nominations for the CARB science panel, as the law requires.”

“This kind of oversight is especially urgent for CARB, an agency that has become notorious for imposing regulations that threaten to kill jobs and stifle economic recovery,” Schiff continued.

“It is vital that CARB and all its regulators and advisors be fully accountable to the people,” said Norman R. “Skip” Brown, president of Delta Construction Co., Inc., in Sacramento, and one of the plaintiffs in the case. “When the law requires oversight and, hopefully, new blood and fresh perspectives on a CARB panel, the law shouldn’t be ignored. Accountability is essential because CARB’s regulations have been so onerous for the California economy. For instance, CARB’s regulations on diesel engines are forcing businesses to replace perfectly good trucks and equipment – or shut down if they can’t afford to comply.”

In this litigation, PLF attorneys represent:

1. Skip Brown, president of Delta Construction Co., Inc., a Sacramento company that uses diesel trucks and equipment, and is dramatically affected by CARB regulations that limit the use of diesel-operated engines;
2. Robinson Enterprises, Ltd., a Nevada City firm involved in construction, logging, trucking, hazard material removal, and petroleum products;
3. North Bay Corporation, a refuse and recycling company;
4. California Dump Truck Owners Association, an association representing over 1,100 trucking companies and 125 affiliate members;
5. Southern California Contractors Association, a not-for-profit mutual benefit trade association;
6. Construction Industry Air Quality Coalition, a not-for-profit mutual benefit corporation that assists the construction industry and regulatory agencies in the development of environmental regulatory strategies that will balance the goals of a healthy environment and a healthy local economy with the least adverse impact on the construction industry;
7. Crane of Ukiah, Inc., a building and engineering construction firm;
8. Diamond D General Engineering, Inc., based in Woodland, CA; and
9. MHS Corporation Compaction Rentals, based in West Sacramento.

The case is *Brown v. Adams*. The complaint is available at PLF’s Web site.

#### **About Pacific Legal Foundation**

Pacific Legal Foundation is the oldest and most successful public interest legal organization that litigates for limited government, property rights, and a balanced approach to environmental regulation, in courts nationwide.