Climate Science Watch Comments on the U.S. Environmental Protection Agency Scientific Integrity Policy – Public Review Draft, 5 August 2011

The scientific integrity directive issued by the Executive Office of the President articulated a vision of removing potential political interference from the dissemination of scientific information to the public and charged each of the Federal agencies with developing policies in accordance with this goal. We appreciate EPA’s posting of the agency’s draft Scientific Integrity Policy for public review and submit the following comments. The comments focus on three areas of particular concern to Climate Science Watch: (1) media communications policy; (2) whistleblower protections; and (3) government accountability in the process of developing and implementing the policy.

SUMMARY OF KEY RECOMMENDATIONS

1. The policy must be strengthened to ensure that EPA scientists are protected from interference with scientific integrity by political appointees and supervisors.

2. The policy must be strengthened and clarified to ensure that communication between agency scientists and the media is without barriers that could otherwise prevent or delay open dialogue and the dissemination of scientific information to the public.

3. Explicit whistleblower protections must be included to ensure not only government accountability, but also protection for agency employees who exercise their free speech rights to challenge institutional illegality, abuse of power, or other betrayals of the public trust.

4. The process of developing and implementing this scientific integrity policy requires increased transparency and accountability.

Climate Science Watch concurs with public comments by the Union of Concerned Scientists (UCS), that the draft policy lacks essential protections for EPA scientists, including whistleblowing rights and freedom of speech, and does not place adequate responsibility on supervisors to uphold the principles of scientific integrity.

Climate Science Watch is a nonprofit public interest education and advocacy project dedicated to holding public officials accountable for using climate research effectively and with integrity in dealing with the challenge of global climatic disruption. Our advocacy has combined concerns of combating the global warming disinformation campaign, protecting freedom of communication by federal scientists, and advancing the policy mission of climate change preparedness. Climate Science Watch is a sponsored project of the Government Accountability Project in Washington, DC.
Accountability of Political Appointees, Supervisors, and Contractors

We need only look at the past decade of abuses, ranging from censoring of agency scientists to political shading of scientific communications, to truly understand why it is of the utmost importance that EPA develop and implement an effective scientific integrity policy designed to prevent such abuses by political appointees and career agency supervisors in the future. EPA’s Scientific Integrity Policy must include strong and explicit language to hold political appointees and supervisors accountable for any inappropriate political interference with agency scientists and scientific communication.

As noted in comments by UCS, the draft policy does not explicitly state that those supervising scientists, as well as contractors, must abide by the principles of scientific integrity, and that any deviation from those principles is in violation of agency misconduct policy. We agree with UCS that scientific misconduct includes behavior by political appointees and supervisors including coercion and intimidation of scientists, censoring or suppressing analysis, and inappropriately influencing scientific advisory panels. Political appointees and supervisors, who are in the nexus of policy influence, research agendas, and scientific communication, must be held to the highest standards. The standards must be explicit; procedures for reporting and dealing with abuses must be explicit; and there must be professional sanctions for political interference with scientific integrity.

We believe scientific misconduct by political appointees and supervisors also includes the deliberately misleading misrepresentation, exaggeration, or downplaying of scientific uncertainty. This latter type of political interference with scientific integrity was characteristic of the previous Administration, notably with reference to the scientific evidence for anthropogenic climate change and its likely adverse consequences for human health and the environment. EPA’s policy, as with other federal agencies and offices, must be structured to discourage this type of interference with science communication, bring to light abuses, and hold offending officials accountable.

Media Communications Policy

While Public Affairs offices should be available to assist EPA scientists and other employees with their media contacts and should be alerted of such communications, pre-approval of such contacts by political appointees, supervisors, or public affairs offices should not be required as part of agency media policy. Public affairs offices should provide assistance to agency scientists only on request by the employee. The agency should never attempt to discourage an employee from speaking with the media, whether by required pre-clearance procedures or by more informal means that could also have a chilling effect on communication. Any interference by agency officials with the freedom of communication between agency scientists and the media should be treated as interference with scientific integrity and procedures should be specified for holding offending officials accountable.

EPA’s media communications policy must specify the fundamental rights of scientists and other agency personnel as they relate to the expression of personal views in media communications, provided the individuals specify that they are not speaking on behalf of, or as a representative of,
the agency, but rather in a private capacity. Also, as long as this ‘personal views exception’ is made, employees must be allowed to identify their affiliation with and position title at EPA, if it has helped to inform their views on the subject under discussion.

Media representatives should be granted access, not only to agency scientists, but additionally to advisory committee meetings. The reasonable use of recording devices for media personnel should be incorporated as well.

These rights and protections must be explicit in the policy if the EPA is to ensure that there are in fact no barriers for scientists when communicating with the press and the public. A failure to explicitly incorporate these protections into a media communications policy ultimately does not sufficiently meet the Presidential mandate, nor EPA’s goal of ensuring open and transparent communications of scientific information.

**Whistleblower Protection Policy**

EPA’s draft policy is entirely inadequate in specifying substantive whistleblower protections. This is expressly inconsistent with the Presidential directive to “adopt such additional procedures, including any appropriate whistleblower protections, as are necessary to ensure the integrity of scientific and technological information and processes.” EPA must use this opportunity to draft and develop additional whistleblower protections into its Scientific Integrity Policy, and ensure that EPA employees are informed of their existence and educated about the procedures in place to ensure their protection. Here, we lay out some specific recommendations as to how EPA can incorporate additional whistleblower protections into its Scientific Integrity Policy.

1. **Commit to scientific freedom provisions in Section 110 of S.743 (the Whistleblower Protection Enhancement Act of 2011), without waiting for Congress to act.**
2. **Make communication of and compliance with whistleblower rights a critical element for performance appraisals of all staff with supervisory responsibilities.**
3. **Commit that upon any civil service or contract employee filing of an allegation and request for investigation, the Administrator shall request an investigation by the OIG, and share the report of the investigation and recommendations for corrective action with the alleger.**
4. **Establish a table of penalties for accountability of anyone found guilty of retaliation/suppression of scientific freedom, or of scientific misconduct.**

These additional whistleblower protections would establish a clear mandate to ensure scientific integrity at EPA. Regarding the scope of whistleblower protections, protected activities should cover any and all disclosures that would be accepted in a legal forum as evidence of significant misconduct, or that would assist in carrying out legitimate compliance functions.\(^2\) Whistleblower protections need to cover disclosures of any illegality, gross waste, mismanagement, abuse of authority, or substantial and specific danger to public health and safety; any other activity that

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undermines the institutional mission to its stakeholders; as well as any other information that assists in honoring those duties. In sum, protections should be afforded under all scenarios that could have a chilling effect on the responsible and free expression of rights.

Coverage for employment-related discrimination should extend to all relevant applicants or personnel who challenge betrayals of the organizational mission or public trust, regardless of formal status. Most significant, whistleblower protection should extend to those who participate in, or are affected by, the organization’s activities. Overarching U.S. whistleblower laws, particularly criminal statutes, protect all witnesses from harassment, because it obstructs government proceedings. To maximize the flow of information necessary for accountability, reliable protected channels must be available for those who choose to make confidential disclosures. Because the forms of harassment are limited only by the imagination, it is necessary to ban any discrimination taken because of protected activity, whether active, such as termination, or passive, such as refusal to promote or provide training. Additionally, any whistleblower policy must include a ban on “gag orders” through an organization’s rules, policies, or nondisclosure agreements that would otherwise override free expression rights and impose prior restraint on speech.

In addition, Climate Science Watch recommends that EPA’s Scientific Integrity Policy detail procedures for educating employees about their rights. It is important that this Scientific Integrity Policy be made available at the beginning of EPA’s employees’ employment, and reinforced regularly.

**Increased Transparency and Accountability**

Integrity in general is about adhering to principles rather than bending those principles to rationalize convenient actions. At the base level, policies to ensure scientific integrity go hand in hand with policies that ensure political integrity. Similarly, just as the White House directive can be viewed as a response to the past abuses of political integrity in the dissemination of scientific information, these abuses are best remedied by an open and transparent process at the agency level as EPA creates guidelines to ensure scientific integrity. Policy goals cannot be appropriately pursued without an accurate accounting for what is known of the scientific context.

We agree with comments submitted by UCS on Making the Agency More Accountable and Transparent – in particular, with reference to releasing the agency’s scientific misconduct procedures, requiring regular public reporting of allegations of political interference in science, releasing visitor log reports on who is meeting with agency officials, and better defining the circumstances in which EPA policymaking should involve scientific experts.

**Concluding Remarks**

EPA’s public review draft Scientific Integrity Policy being developed in response to President Obama’s directive leaves substantial uncertainty as to how EPA will articulate and implement a policy that adequately responds the vision of the Executive Office. The policy must provide greater detail and more explicit language on how it will ensure the open and transparent dissemination of scientific information. We urge EPA to consider the range of past abuses of
scientific information as it creates a Scientific Integrity Policy that seeks to prevent these abuses from occurring in the future. Climate Science Watch recognizes the importance of this endeavor and the complexity of the challenge of getting the policy right and implementing it effectively. Thank you for your consideration.

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