September 6, 2011

U.S. Environmental Protection Agency
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Re: Draft EPA Scientific Integrity Policy

OMB Watch welcomes the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) draft scientific integrity policy.

As a nonprofit organization dedicated to open government, accountability, and citizen participation since 1983, OMB Watch has long supported efforts to strengthen scientific integrity in government. Sound, uncensored science is critically important to protecting our health, economy, and environment. Americans should be able to trust that government decision-making is based on the best available scientific and technical information. OMB Watch appreciates the efforts by the Obama administration and EPA to bolster scientific integrity.

General Comments on EPA's Policy

We applaud EPA's openness in developing its scientific integrity policy, including its decisions to post its draft policy online and solicit public comments. This openness will strengthen public trust in EPA's science and, hopefully, strengthen the policy itself. To continue this openness, EPA should publish the comments it receives as well as a response to significant issues raised in the comments.

Despite the general openness of the process, it is difficult to make a complete assessment of EPA's draft policy because important appendices have not yet been released to the public. EPA's draft policy relies on the operation of its Scientific Integrity Committee and its procedures for addressing misconduct allegations, but the committee charter and the Flow Chart for Allegations of Misconduct were not released for public review. We recommend that EPA publish a revised draft policy, including all appendices, for public comment before finalizing the policy. In addition, some EPA policies referenced in the draft policy, such as *Scientific Misconduct in the Conduct and Discipline Manual* (EPA Order 3120.1), cannot easily be located by the public online. We recommend that EPA's policy include a publicly-accessible URL for each document referenced in the policy.

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In general, the portions of EPA's draft policy that have been released to date establish the appropriate principles for scientific integrity, particularly in striving to keep science free from political interference and to foster a culture of scientific openness. However, the translation of these principles into effective policies is lacking, and we recommend that EPA make significant changes to the draft policy to address this gap.

In revising the draft policy, we recommend that EPA review the draft policy published by the National Oceanic and Atmospheric Administration (NOAA) in June 2011. As OMB Watch noted in its comments to NOAA, that agency's draft policy includes thoughtful, enforceable details to protect and reinforce scientific integrity in the agency.[1] For instance, the NOAA draft policy establishes standards for contractors and grantees as well as agency staff, and it is important that EPA's policy do so as well.

Recommendations

To further strengthen scientific integrity at EPA, OMB Watch offers the following recommendations:

1. Make the prohibitions on political interference with science enforceable;
2. Strengthen protections for the free flow of scientific information;
3. Protect personnel who blow the whistle on scientific integrity violations;
4. Improve scientific integrity in peer review and federal advisory committees;
5. Expand the role and responsibilities of the Scientific Integrity Committee; and
6. Strengthen scientific integrity in interagency processes.

1. Make the prohibitions on political interference with science enforceable

EPA's draft policy rightly expresses the principle that the agency will defend against political manipulation of science. For instance:

> Section II: "[I]t is … essential that political or other officials not suppress or alter scientific findings"
>
> Section IV(A): "[T]his policy … [r]equires decisions by EPA science and other managers about the content of a scientific product to be based only on scientific considerations"
>
> Section IV(B): "This policy is intended to outline the Agency's expectations for developing and communicating scientific information … further providing for and

[1] http://www.ombwatch.org/files/info/NOAA-SI-OMBW.pdf

> protecting EPA's longstanding commitment to the full, timely, unfiltered and accurate dissemination of its scientific information free from political interference."

However, EPA's draft policy does not make these principles clearly enforceable. To prevent political manipulation of science, and redress any instances which may occur, it is essential that scientific integrity policies provide specific and enforceable standards. By failing to do so, EPA risks failing to accomplish the most important purpose of the new policies.

EPA's draft policy establishes some limited enforcement by directing staff to report scientific misconduct to the Scientific Integrity Committee or Office of the Inspector General. In Section IV(A) of the draft policy, EPA establishes that "[s]cientific misconduct specifically includes intentional circumvention of the integrity of the science and research process that compromises the scientific process." However, the draft policy does not establish clear standards for what actions would compromise the scientific process, specifically regarding political interference with science. While the draft policy does prohibit "fabrication, falsification, or plagiarism," there are several other ways to violate scientific integrity, such as politically-motivated censorship of, or inappropriate delays in releasing, scientific information. We echo the comments of the Union of Concerned Scientists regarding the need to expand the draft policy's definition of scientific misconduct.[2]

To make the draft policy's prohibition on political manipulation of science effective, EPA's policy should include a specific code of conduct to protect scientific integrity, including standards for supervisors and managers, similar to Section 7 of NOAA's draft policy. In addition, EPA should specifically state that violating the code of conduct constitutes scientific misconduct, as in Section 8.01 of its draft policy.

2. Strengthen protections for the free flow of scientific information

EPA's draft policy includes several laudable statements on the importance of preserving the free flow of scientific information. For instance, Section IV(A) states that "this policy … [f]acilitates the free flow of scientific information." In addition, Section IV(B) of the draft policy establishes "the importance and the need to foster a culture of openness regarding the results of research, scientific activities, and technical findings," and delineates specific standards for scientific communication.

Unfortunately, EPA's draft policy does not go far enough to establish specific protections for the free flow of scientific information. We recommend that EPA significantly revise Section IV(B) of the draft policy to streamline procedures for the release of scientific information and strengthen protections for open communication. Particularly troublesome is possibility of public

[2] http://www.ucsusa.org/assets/documents/scientific_integrity/UCS-Comments-EPA-SI-Policy-Compilation.pdf

affairs staff becoming gatekeepers between EPA scientists and the public due to the broad role of public affairs staff established in the draft policy. We recommend that EPA more clearly and narrowly delineate the role of public affairs staff to ensure the policy does not inhibit the free flow of information. In addition, we urge EPA to carefully consider the recommendations of the Union of Concerned Scientists and the Society of Environmental Journalists[3] regarding the free flow of scientific information.

3. Protect personnel who blow the whistle on scientific integrity violations

EPA's draft policy states in Section IV(A) that it "[s]trengthens the actual and perceived credibility of EPA science by … adopting appropriate whistleblower protections." However, despite this assertion, the policy does not actually describe those critical protections.

For EPA's scientific integrity policy to achieve its purposes, it is essential to ensure that those with knowledge of misconduct can safely report it. We recommend that EPA's policy include a clear statement that the agency will protect all personnel who uncover and report allegations of scientific misconduct. For instance, NOAA's draft policy includes such a statement in Section 5.04.

In addition, EPA should ensure that its whistleblower protections are enforceable under existing statutory protections. Specifically, 5 U.S.C. 2302(b)(8) protects disclosures of information reasonably believed to evidence "a violation of any law, rule, or regulation, or; gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety." While the latter category of disclosures could encompass disclosures of scientific integrity violations, their inclusion is not certain. To ensure whistleblowers have legal recourse and for the avoidance of doubt, EPA should issue its scientific integrity policy as a regulation. Additionally, the EPA policy should clearly state that any violation of scientific integrity policy represents an abuse of authority and/or gross mismanagement.

4. Improve scientific integrity in peer review and federal advisory committees

EPA's draft policy begins to address the importance of scientific integrity in the agency's federal advisory committees (FACs) and peer review. However, the draft policy does not include sufficient detail about what the agency will do in either case.

The draft policy helpfully establishes in Section IV(C)(1) that: "the selection of members to serve on a scientific or technical FAC [will] be based on expertise, knowledge, and contribution to the relevant subject area." The same section also meaningfully improves standards for the

[3] http://www.sej.org/sites/default/files/EPA-ScientificIntegrityComments090211.pdf

transparency of FACs, including transparent recruitment of panelists, publishing biographical information of panelists, and disclosing conflict of interest waivers. In addition, the draft policy refers to EPA's existing peer review policies in Section IV(C)(2).

Despite these references, the policy fails to directly address ensuring scientific integrity by the selection of experts without conflicts of interest for advisory committees and/or peer review. Though the existing policy and handbook provide some standards for selecting panelists and minimizing conflicts of interest, the agency should take the opportunity while drafting its scientific integrity policy to institute further improvements. OMB Watch specifically recommends:

Define conflict of interest: Despite repeated use of the phrase, EPA's draft policy never defines "conflict of interest." We concur with the Union of Concerned Scientists' recommendation that EPA should include a clear definition and criteria for what constitutes a conflict of interest.

Publish selection decisions: EPA should make publically available the rationales for major decisions made during the panel selection process, including the criteria and procedures used. This would increase transparency in the panel formation process.

Apply scientific integrity standards to peer reviewers and federal advisory committees: External peer reviewers and contractors should be required to adhere to the same standards of scientific integrity as EPA employees. The draft policy should therefore be expanded to apply to all contractors who engage in or assist with scientific activities. Specifically, the agency should require all committee members and peer reviewers to sign a statement agreeing to abide by the scientific integrity standards. Individuals who refuse should not be selected as EPA peer reviewers or advisory committee members, and those who are found to violate the standards should be barred from participating in such roles in the future.

For example, in 2007, EPA selected a hazardous waste industry scientist to peer review the science behind an agency proposal to deregulate the industry, raising concerns among public interest advocates about the impartiality of the science.[4] Although EPA adopted an addendum to its peer review handbook in 2009 regarding impartiality of reviewers, the addendum makes clear that "the Standards of Ethical conduct for Employees of the Executive Branch … do not apply to experts hired through a contract mechanism. Experts are held to the standards that are in their contract." As a result, it is crucial that EPA enforce clear standards for external peer reviewers, including requiring compliance with the agency's scientific integrity policy.

Increase disclosure of relevant information on panelists: Though the draft policy recommends that "the Agency to make all Conflict of Interest waivers granted to committee members publicly

[4] http://www.cspinet.org/integrity/watch/200709102.html

available," it should also require greater disclosure of information that would allow the public to assess conflicts or biases, including prior financial and institutional relationships and public statements. While current policies require conflict of interest disclosure, the time period of the review is far too short. For peer reviewers, the review only covers the previous two years. The EPA should expand conflict of interest reviews to cover at least 10 years.

5. Expand the role and responsibilities of the Scientific Integrity Committee

EPA rightly recognizes the need for a regular process to review the new policy's effectiveness and the agency's performance under the policy by establishing its Scientific Integrity Committee in Section V of the draft policy. Because it can be difficult to predict how a new policy will perform in reality, it is helpful that the draft policy charges the committee with annual public reporting on scientific integrity in the agency, biennial review of the policy's effectiveness, and recommending revisions to the policy. In addition, the draft policy helpfully tasks the committee with training agency personnel on scientific integrity, a necessary step to ensure compliance and strengthen a culture of scientific integrity in the agency.

To further strengthen the draft policy, EPA should clarify the contents of the committee's public reports. Specifically, the policy should make misconduct investigations transparent.
We stated previously that Americans should be able to trust that government decision-making is based on the best available scientific and technical information. By extension, Americans deserve to know when the scientific integrity of a study or decision has been compromised. However, EPA's draft policy does not give consideration to public reporting of violations of the policy. This public accountability is an important aspect to safeguarding the policy's success.

Accordingly, we echo the recommendation of the Union of Concerned Scientists that EPA should revise the draft policy to provide for regular public reporting of aggregate statistics of misconduct allegations and the details of confirmed allegations, such as in the committee's annual public reports.

6. Scientific integrity at EPA depends on strong protections in interagency processes

Strong scientific integrity protections at EPA alone are not sufficient to fully protect the integrity of EPA science. Because EPA is sometimes party to interagency processes, EPA science may be weakened if similarly strong scientific integrity protections are not in place at other agencies. OMB Watch has long pointed out that interagency processes are often vulnerable to political manipulation and encourages EPA and the administration to explore ways to ensure that interagency processes do not result in the loss of scientific integrity. The task of fully securing EPA science will not be complete until other agencies do so as well, particularly the Office of Management and Budget (OMB) and other White House offices.

As a result, it is unclear how EPA's commitment to prevent political manipulation will be resolved with the possibility of interference during interagency reviews. While EPA's authority in such situation is limited, EPA should empower its personnel to protect the scientific integrity of their work to the greatest extent possible. We encourage EPA to add a statement that authorizes its personnel to object to interagency actions that they feel would damage the scientific integrity of their work and to bring such situations to their supervisor's attention.

In addition, EPA should act to the greatest extent of its authority to preserve the free flow of scientific information in interagency processes. Where interagency review may lead to lengthy delays in releasing information, EPA should consider publishing a draft. Furthermore, we encourage EPA to consider the Union of Concerned Scientists' and the Society of Environmental Journalists' recommendation to publish drafts of all information submitted to other agencies for review recommendation as a way to deter political manipulation in interagency processes.

Conclusion

OMB Watch appreciates the opportunity to comment on EPA's draft scientific integrity policy. We hope you take our recommendations into consideration. If you have questions about our comments or want to discuss the issues further, please feel free to contact us.

Sincerely,

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