

# CENTER FOR ENVIRONMENTAL ACCOUNTABILITY

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SUBJECT: CENTER FOR ENVIRONMENTAL ACCOUNTABILITY  
COMMENTS: U.S. ENVIRONMENTAL PROTECTION AGENCY'S  
DRAFT SCIENTIFIC INTEGRITY POLICY (EPA-HQ-ORD-2023-  
0240)

Dr. Gwinn:

On January 24, 2024, the U.S. Environmental Protection Agency (EPA) noticed a revised draft scientific integrity policy (Draft Policy) in the *Federal Register*.<sup>1</sup> The Draft Policy is a significant policy change that raises fundamental questions about EPA's commitment to open scientific debate and its discernment of the distinction between the scientific enterprise and policy making. Further, the Draft Policy calls into question the ability of future EPA leadership to effectively manage the organization and to ensure that EPA policies reflect the will of the People.

The Center for Environmental Accountability (CEA)<sup>2</sup> is deeply concerned that the Draft Policy accomplishes the opposite of its stated intent: instead of increasing scientific integrity, the Draft Policy threatens scientific integrity and undermines the public's trust in science and agency decisions justified by appeals to scientific expertise.

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<sup>1</sup> U.S. Environmental Protection Agency, "Scientific Integrity Policy Draft for Public Comment," 89 Fed. Reg. 4606 (Jan. 24, 2024).

<sup>2</sup> The CEA is a 501(c)(3) organization devoted to educating the public and government on the importance of transparency and accountability in the areas of environmental and energy policy. CEA's work is driven by its core principles, including a commitment to the rule of law, to a clean environment, and to a healthy human environment founded on a strong economy and vibrant communities animated by people gainfully employed in all the occupations of human flourishing. CEA understands that adherence to law requires respect for the proper roles of each branch of government and for the respective roles of the federal government and of state governments. CEA recognizes that the public interest requires a balance of environmental stewardship, resource development, and energy access and security, and that environmental remediation functions best when targeted at those communities injured by unlawful pollution.

As discussed in further detail in the attached comments, the Draft Policy:

- 1) Creates a climate of fear that enables individual EPA staffers to police scientific debates within the agency without pushback from other career staff and free from direction from superiors in career management or agency leadership.
- 2) Attempts to prevent EPA under future administrations from implementing policies contrary to those of the Biden Administration.
- 3) Undermines the rigors of evidence-based decision making by ingraining progressive social engineering goals (*e.g.*, diversity, equity, and inclusion or DEI) and other non-scientific considerations (*e.g.*, Indigenous Knowledge) into government-led and funded science.

EPA should shelve the Draft Policy and withdraw its existing scientific integrity (SI) policy, which is different in degree but not in kind. Only by tearing down this Potemkin edifice to the studs can EPA properly reorient its SI efforts. This process would necessarily include making a threshold determination whether a standalone SI policy is warranted, and if so, precisely delineating the goals and scope of such a policy and then tailoring it both to address these goals and to mitigate potential, unintended harms.

In considering these questions, EPA must articulate the need for an SI policy, and weigh this against the risks that it could be weaponized to undermine any formal policy's professed goals. EPA should further explain what changed circumstances necessitate a formal policy given that the agency carried out its mandate without one for the first 42 years of its existence. Finally, EPA must not lose sight of the marked rise of censorship on high-stakes matters of public concern—including those at the intersection of science and government policy.

The Draft Policy's threats to speech, open inquiry, and the formation of sound policy are many. Both the existing SI policy and the Draft Policy chill debate among government scientists and discourage requests for government funding for virtually any scientific endeavor that might challenge widely accepted scientific theories or data, or merely cast doubt on their relevance to concrete policy questions. Unfortunately, the Draft Policy goes even further. As proposed, it not only constrains agency leadership's public statements on matters touching on science, but does so in broad, ill-defined terms that virtually compel leadership and even managers of official agency social media accounts to confine their expression to pre-approved mantras. This threat to the free flow of information is especially acute on controversial issues, which are hotly contested precisely because they inform policy

decisions that have the greatest impact on the public. Yet, it is on these issues where open debate and the marketplace of ideas proves most valuable.

Without safeguards to prevent pretextual scientific integrity allegations, the Draft Policy, like the existing one, can and will be weaponized to silence critics – both political appointees and career civil servants. The specter of a frivolous scientific integrity allegation is often sufficient to stifle internal debate. By merely alluding to scientific integrity concerns, a single EPA employee may shut down debate or preempt career management from *managing* their staff and the use of agency resources.

As EPA reports in their “2021 Annual Report on Scientific Integrity,”<sup>3</sup> over half of the allegations since 2012 assert “interference” or “delay/suppression.” Likewise, since 2012, two-thirds of requests for advice—a pre-allegation process where employees can raise a question or concern with the Scientific Integrity Officer before making an allegation—fall within these two categories. And it’s easy to see why. After all, “interference” and “delay/suppression” are vague, subjective terms. Coupled with the Draft Policy’s omission of any mention of consequences for frivolous allegations, this discourages staff from working out differences on matters relating to science in a collegial manner. Indeed, the Draft Policy is an open invitation to disgruntled staff to file scientific integrity claims over disagreements large and small that are inherent to producing, analyzing, and applying science to policy questions. This dynamic, and the institutional mentality it breeds, is itself a threat to scientific integrity, the quality and completeness of EPA scientific products and advice, and the efficacy of EPA policies.

Finally, all this does real harm to the agency’s function as an organ of the executive branch. The Draft Policy obstructs governance within EPA by compelling both political leadership and career management to walk on eggshells when dealing with staff, commenting on drafts, or mediating disputes on matters of science and its interface with the policymaking function. Leadership and managers must remain constantly vigilant, lest an inartful phrase or well-meaning attempt to resolve (or amplify) internal debate be miscast as “interference,” “suppression,” or “delay.” In this climate, the act of administration itself bogs down in stilted discussion, tortured process, and a culture of avoidance.

This Draft Policy promises to further politicize science, mire policy formation in gridlock, and further alienate voters from the administrative state by continuing unelected bureaucrats’ consolidation of influence at the expense of the President’s chosen agency leadership. For these reasons, it should be withdrawn.

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<sup>3</sup> U.S. Environmental Protection Agency, “2021 Annual Report on Scientific Integrity,” *available at* <https://www.epa.gov/scientific-integrity/2021-annual-report-scientific-integrity> (last updated March 31, 2023) (2021 SI Annual Report).

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CENTER FOR ENVIRONMENTAL ACCOUNTABILITY

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**DETAILED COMMENTS OF THE  
CENTER FOR ENVIRONMENTAL ACCOUNTABILITY**

*Comments on  
The Environmental Protection Agency's  
Scientific Integrity Policy Draft*

**89 Fed. Reg. 4606 (Jan. 24, 2024)  
EPA-HQ-ORD-2023-0240**

**Submitted February 23, 2024**

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## ACRONYMS AND ABBREVIATIONS

Acronym/ Abbreviation	Name
Draft Policy	Draft Science Integrity Policy published on January 24, 2024
2012 SI Policy	EPA 2012 Science Integrity Policy
CASAC	Clean Air Scientific Advisory Committee
CEA	Center for Environmental Accountability
DEI	Diversity, equity, and inclusion
E.O.	Executive Order
EPA	Environmental Protection Agency
Fed. Reg.	Federal Register
IQA	Information Quality Act
LNT	Linear no threshold
NAAQS	National Ambient Air Quality Standards
OIG	Office of the Inspector General
OIRA	Office of Information and Regulatory Affairs
OMB	White House Office of Management and Budget
OSTP	White House Office of Science and Technology Policy
PM	Particulate Matter
SAB	Science Advisory Board
SI Policy	Scientific Integrity Policy
SIO	Scientific Integrity Official



*“As long as men are free to ask what they will, free to say what they think, free to think what they must, science will never regress and freedom itself will never wholly be lost.”*

- J. Robert Oppenheimer

## I. INTRODUCTION

The wisdom contained in this quote must guide any government policies related to science.

Allowing agency staff to express their views on scientific matters in the workplace without fear of reprisal is fundamental to the scientific process. An unfettered exchange of views, questions, and challenge forces scientists to defend their methodology and question underlying assumptions. This ensures, as much as possible, that scientific work product reflects the objective truth on the matter at hand.

Similarly, arming politically accountable policymakers with high-quality information and tools and abiding by their policy decisions is essential to ensuring government of the People. If a scientist wants to make policy, they must win elected office or secure a presidential appointment to a senior policymaking role at an agency.

However, EPA’s Scientific Integrity Draft Policy (Draft Policy) undermines both the conduct of science and policy due to the practical reality that a scientific integrity allegation against an EPA employee can have devastating, irreparable impacts on that person’s professional prospects—even where the allegation is later determined to be unfounded. The implied threat of an allegation, and the damage caused by frivolous allegations, silences critical voices among career staff and political appointees alike. For vivid illustration of how this basic dynamic can chill the free exchange of ideas in institutions nominally devoted to defending it, one only need look at university campuses.<sup>4</sup>

The Center for Environmental Accountability (CEA) is deeply concerned that the Draft Policy<sup>5</sup> is less about ensuring scientific integrity or advancing evidence-based decision and more about ensuring certain policy outcomes, obstructing others, and discouraging internal dissent from those who disagree with this administration’s preferred policies or that question the rigor or validity of their scientific foundations.

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<sup>4</sup> Dylann Laskey, Bipartisan Policy Center, “Overriding the Heckler’s Veto,” *available at* <https://bipartisanpolicy.org/blog/overriding-the-hecklers-veto/> (May 16, 2023).

<sup>5</sup> U.S. Environmental Protection Agency, “EPA Scientific Integrity Draft Policy for EPA External Comment Period,” at 6 (Jan. 24, 2024) (EPA 2024 Draft SI Policy).

Instead of advancing scientific integrity, this Draft Policy:

- 1) Creates a climate of fear that enables individual EPA staffers to police scientific debates within the agency without pushback from other career staff and free from direction from superiors in career management or agency leadership.
- 2) Attempts to prevent EPA under future administrations from implementing policies contrary to those of the Biden Administration.
- 3) Undermines the rigor of evidence-based decision making by ingraining progressive social engineering goals (*e.g.*, diversity, equity, and inclusion or DEI) and other non-scientific considerations (*e.g.*, Indigenous Knowledge) into government led and funded science.

Many of the Draft Policy's problems stem from its definitions section. When dealing with written policies produced by large bureaucracies, the devil is often in the definitions. Here, the Draft Policy's definitions are vague, over-inclusive and subjective. Ill-defined terms are strewn throughout the operative "Policy Provisions" section, making it impossible to determine what would (and would not) constitute a violation or expose an employee to a potential scientific integrity investigation.

For example, while the text makes clear that exercising "inappropriate influence" violates the Draft Policy, what this means in practical terms is as clear as mud.<sup>6</sup> The Draft Policy defines the operative phrase as "an attempt to *shape or interfere* in scientific activities, or the communication about or use of scientific activities or findings, against well-accepted scientific methods and theories without justification."<sup>7</sup> (emphasis added)

What does it mean "to shape" activities or communication? The policy never says. What constitutes "use" of scientific activities or findings? On this, too, the policy is silent. What is the universe or hallmarks of "well-accepted . . . theories"? And what constitutes "scientific justification" to go "against" them? Again, the definitions section leaves us guessing because *none* of these terms material to defining "inappropriate influence" are themselves defined in the Draft Policy.

And where material terms are defined, it often introduces further ambiguity, either due to a Russian-nesting doll of poorly-defined terms, or because defined terms are

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<sup>6</sup> EPA 2024 Draft SI Policy at 10. (Stating that it is EPA policy to "[p]rohibit the interference or **inappropriate influence** or unreasonable delay . . . in the design, proposal, conduct, review, management, evaluation or reporting of scientific activities and the use of scientific information...") (emphasis added).

<sup>7</sup> *Id.* at 6.

so sweeping they could be stretched to ensnare any manager simply by virtue of *managing*. As noted, “inappropriate influence” involves an “attempt to shape or interfere.” In turn, the definition of “Interference” begins by launching into a volley of undefined terms, “inappropriate, scientifically unjustified intervention...”<sup>8</sup> We *are* told that “interference” includes “censorship” (which is nowhere defined), “distortion” (also not defined), and “suppression” of certain types of information.<sup>9</sup> “Suppression” is then defined as “preventing something from being expressed or known.”<sup>10</sup> In short, if an EPA staffer *feels* that a manager or other colleague is somehow blocking “scientific or technological findings, data, environmental information, or conclusions” from being “expressed” or “known” by anyone or to anyone, internal or external to the agency, at any time and for any duration, then the staffer would appear to have grounds to file a scientific integrity allegation.<sup>11</sup>

This definitional uncertainty creates a minefield. No hierarchical organization can operate effectively under the restrictions employed by the Draft Policy—and certainly not one as active as the EPA. During the development of regulatory actions, dozens of “scientific products”<sup>12</sup> are created and reviewed, none of which are singularly determinative of the policy outcome. While CEA goes into more detail in the hypothetical provided in Section IX, the dozens of “scientific” decisions are reviewed by career colleagues and managers, as well as political officials – with each review raising the potential for a scientific integrity allegation.

If during the review of these dozens of “scientific products,” a scientific integrity allegation is made, then a group of career staff known as the “science integrity committee”<sup>13</sup> – which operates outside any management chain and does not report to any political officials – interpret and apply the subjective terms in the 2024 Draft SI Policy. These self-appointed arbiters of scientific integrity then have the power to destroy careers of public servants, career staff and appointees alike, with impunity. To be sure, scientific integrity allegations are meant to be confidential. However, EPA’s history of leaks should not provide with confidence the information will not become front-page news.<sup>14</sup>

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<sup>8</sup> *Id.* at 7.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> EPA defines “scientific products” as “work products that contain scientific information” and which may “support a research agenda, regulatory program, policy position, or other EPA position or action.” *Id.* at 8.

<sup>13</sup> U.S. Environmental Protection Agency, “Scientific Integrity Charter,” *available at* [https://www.epa.gov/sites/default/files/2020-03/documents/scic\\_charter\\_final\\_march2020.pdf](https://www.epa.gov/sites/default/files/2020-03/documents/scic_charter_final_march2020.pdf) (Mar. 2020).

<sup>14</sup> See e.g., Kevin Bogardus, Greenwire, “EPA employees’ data ‘potentially compromised’ in hack,” *available at* <https://subscriber.politicopro.com/article/eenews/1060019757> (Jun. 5, 2015).

In the final analysis, the Draft Policy will not increase scientific integrity within EPA nor public trust in EPA's science or agency decisions justified on appeals to science. Much the opposite. The Draft Policy serves as a textbook example of the "politicization of science." EPA wants the public to believe that both scientists and career civil servants are objective automatons with no political views or personal agendas and that they would not abuse an allegation process based on a policy so vague and sweeping. This flies in the face of the experience under the existing scientific integrity policy established in 2012. Scientists and career officials are human. They suffer from typical human flaws, including the potential to be prideful, domineering, and arrogant. *Some* career scientists will be willing to misuse a flawed policy and process to intimidate or neutralize what they perceive as internal opposition to accomplishing what they deem "the right thing to do."

Inevitably, the Draft Policy will undermine science and sound policy making, and further reduce political accountability for EPA's actions and the public's trust in bureaucratic expertise. Labeling the Draft Policy as a defense of scientific "integrity" is double-speak.

## II. BACKGROUND

### A. History of EPA's SI Policy

The Draft Policy and *Federal Register* notice contain much of the background in the development of EPA's SI Policy during the past decade. EPA's SI Policy traces its lineage to an Obama-era presidential memorandum,<sup>15</sup> and this update was directed by and bears all the ideological fixations of President Biden's own memorandum.<sup>16</sup>

In addition, the White House Office of Science and Technology Policy (OSTP) has issued memoranda and policies in response to each of these presidential actions.<sup>17</sup> These OSTP products were not subject to public comment before being finalized. This "black box" approach is unfortunate. Many of CEA's objections to EPA's SI Policy are doubtlessly traceable to the flawed course set by the Executive Office of the President. Though CEA focuses its comments on EPA's SI Policy, the most

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<sup>15</sup> President Obama, "Scientific and Technological Information; Government Use (Memorandum of March 9, 2009)," 74 Fed. Reg. 10671 (Mar. 11, 2009).

<sup>16</sup> President Biden, "Scientific Integrity and Evidence-Based Policymaking; Efforts To Restore Trust in Government (Memorandum of January 27, 2021)," 86 Fed. Reg. 8845 (Feb. 10, 2021).

<sup>17</sup> See e.g., John Holdren, Office of Science and Technology Policy, "Scientific Integrity," available at <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf> (Dec. 17, 2010); National Science and Technology Council, Office of Science and Technology Policy, "Protecting the Integrity of Government Science," available at [https://www.whitehouse.gov/wp-content/uploads/2022/01/01-22-Protecting\\_the\\_Integrity\\_of\\_Government\\_Science.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/01/01-22-Protecting_the_Integrity_of_Government_Science.pdf) (Jan. 2022); and National Science and Technology Council, Office of Science and Technology Policy, "A Framework for Federal Scientific Integrity Policy and Practice," available at <https://www.whitehouse.gov/wp-content/uploads/2023/01/01-2023-Framework-for-Federal-Scientific-Integrity-Policy-and-Practice.pdf> (Jan. 2023).

efficient approach for the administration to right the scientific-ship-of-state is to rescind and reissue the OSTP products after an extended period of public review and comment.

Additionally, while not directly related to EPA's SI Policy but to the goals that EPA's SI Policy professes, there were significant transparency and replicability policies enacted during the Trump Administration.

Unfortunately, Draft Policy ignores steps taken by the Trump Administration<sup>18</sup> and Trump EPA<sup>19</sup> between 2017 and 2021 – expressed in detail in section VI – to enhance transparency and replicability and to prevent potential conflicts of interest in scientific matters. While these policies may have been rescinded by the Biden EPA<sup>20</sup> – actions which themselves appear to be violations of the Draft Policy – they deserve to be discussed in any scheme of SI Policy rather than memory-holed.

The Trump Administration policies, which included providing all EPA guidance on a single website and requiring transparency in the rulemaking process, are discussed in further detail later. Regardless of the status of these policies, their goal was to increase transparency and replicability of scientific activities – something that should be acknowledged in the background section of the Draft Policy.

## **B. Statutory Authority**

For the first four decades of its existence, EPA discharged its statutory duties without an SI Policy. In 2012, EPA developed its initial SI Policy (2012 SI Policy) in response to President Obama's memorandum.<sup>21</sup> The 2012 SI Policy does not cite to any statutory authority. The Draft Policy invokes a laundry-list of eight (8) statutes, without pointing to specific statutory language authorizing, let alone necessitating,

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<sup>18</sup> See e.g., Exec. Order No. 13891, "Promoting the Rule of Law Through Improved Agency Guidance Documents," 84 Fed. Reg. 55235 (Oct. 15, 2019) (E.O. 13891); Guidance Implementing Executive Order 13891, Dominic J. Mancini, Acting Director, OIRA, October 31, 2019, (M-20-02).

<sup>19</sup> See e.g., U.S. Environmental Protection Agency, "EPA Guidance; Administrative Procedures for Issuance and Public Petitions," 85 Fed. Reg. 66230 (Oct. 19, 2020) (EPA Guidance Transparency Policy).

<sup>20</sup> See e.g., Exec. Order No. 13992, "Revocation of Certain Executive Orders Concerning Federal Regulation," 86 Fed. Reg. 7049 (Jan. 25, 2021) (E.O. 13992); U.S. Environmental Protection Agency, "EPA Guidance; Administrative Procedures for Issuance and Public Petitions; Rescission," 86 Fed. Reg. 26842 (May 18, 2021).

<sup>21</sup> U.S. Environmental Protection Agency, "Scientific Integrity Policy," available at [https://www.epa.gov/system/files/documents/2023-12/scientific\\_integrity\\_policy\\_2012\\_accessible.pdf](https://www.epa.gov/system/files/documents/2023-12/scientific_integrity_policy_2012_accessible.pdf) (last visited Feb. 22, 2023).

that EPA or any other agency maintain an SI policy.<sup>22</sup> We reviewed these eight “statutes” and can find no statutory language to that affect.<sup>23</sup>

At the same time, Draft Policy encroaches on the territory of the congressionally mandated EPA Office of the Inspector General,<sup>24</sup> generally undermines the President’s control of the executive branch, and in many cases the execution of the President’s policy agenda.

### **C. EPA’s process for a scientific integrity allegation**

The Draft Policy directs the Scientific Integrity (SIO) to draft new procedures “expeditiously.”<sup>25</sup> Therefore, we do not know what changes to the procedures for seeking advice or reporting an allegation will occur under Draft Policy. Currently, any “covered entity”<sup>26</sup> within EPA may report an allegation to the SIO.

Once the allegation is made by the “covered entity,” the Scientific Integrity Program<sup>27</sup> screens the allegation, gathers additional information, and makes a determination. The determination includes recommendations for corrective action and relevant managers and supervisors are informed of the outcome for potential punishment.<sup>28</sup>

## **III. EPA’S SI POLICY CREATES AN AURA OF FEAR, DISCOURAGES OPEN DEBATE AND UNDERMINES THE SCIENTIFIC PROCESS**

### **A. The implied threat of an SI allegation is sufficient to chill dissent at all levels of the agency**

The Draft Policy incentivizes threatening other EPA staff with potential science integrity allegations and enables the loudest, least collegial voice to dominate any discussion—and even those that aren’t strictly scientific.

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<sup>22</sup> (1) The America COMPETES Act, as amended USC Pub. L. 110-69, section 1009; (2) The Foundations for Evidenced-based Policymaking Act of 2018, USC Pub. L. 115-435; (3) The Whistleblower Protection Act (WPA) of 1989, as amended USC Pub. L. 110-12; (4) Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635; (5) The Federal Advisory Committee Act of 1972, 5 USC Pub. L. 92-463, §1, Oct. 1972, 86 Stat. 770; (6) Employee Responsibilities and Conduct, 5 CFR Part 735; (7) Federal Conflict of Interest Laws, 18 USC 201-209; and (8) The Federal Managers Financial Liability Act, Pub. L. 97-255.

<sup>23</sup> Though the 2024 Draft SI Policy states that the eight (8) items are statutes, the citation is to federal regulations and thus not statutes. While those regulations interpret Federal laws, they are not laws.

<sup>24</sup> See Inspector General Act of 1978, as amended.

<sup>25</sup> EPA 2024 Draft SI Policy at 24.

<sup>26</sup> This includes: employees, political appointees, contractors, trainees, interns, fellows, grantees, volunteers, special government employees and advisory committee members. 2021 SI Annual Report at 1.

<sup>27</sup> To note, the 2024 Draft SI Policy does not define who makes up the Scientific Integrity Program.

<sup>28</sup> *Id.* at 1-2.

The Draft Policy facilitates pretextual scientific integrity allegations against colleagues, career managers, and political officials. This effect is exacerbated by the Draft Policy's statement that "violations of scientific integrity policies should be taken as seriously as violations of government ethics rules and should lead to appropriate consequences."<sup>29</sup> This is extremely concerning as violations of federal government ethics laws can include civil penalties and prison time.<sup>30</sup>

Additionally, the Draft Policy limits EPA leadership's ability to manage the agency. The inability to manage is exemplified by this provision, which states that it is EPA policy to:

**ensure career EPA employees make the final determination** concerning changes or suggested changes to scientific documents or other scientific products in response to external (including interagency) comments. (emphasis added).<sup>31</sup>

In essence, any manager – career or political – that does not give the "last word" to a career EPA employee, is violating the Draft Policy. Whatever the specifics of the exchange, the elastic, sweeping prohibitions of the policy can likely be stretched to capture the manager's conduct.

For career management, a science integrity allegation can prevent that manager from being promoted. The federal government does not typically promote managers who have records of issues with their staff. It therefore becomes paramount for career managers to do whatever they can to prevent a scientific integrity allegation. For agency leadership and other political officials, unlike career staff, their time is limited by the administration. Therefore, science integrity allegations can present a real threat to continued employment outside the public sector.

The aura of fear will undermine the quality of scientific products and advice, and by extension, the efficacy of EPA policies. A scientific integrity allegation against a career or political official can have lasting, devastating impacts to that person's future. The potential impacts of a science integrity allegation to both career staffs' and political officials' future and the inability to punish someone for false allegations creates an ever-present implied threat of allegations. For example, if a career manager or political official knows that a career staff member is known to raise concerns over potential science integrity issues, managers are less likely to ever question that staff member's work. The result will be less reliable information for evidence-based decision making, including on broad policy matters.

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<sup>29</sup> EPA 2024 Draft SI Policy at 20.

<sup>30</sup> U.S. Office of Government Ethics, "Government Ethics and Accountability," *available at* <https://oge.gov/web/oge.nsf/Resources/Government+Ethics+and+Accountability> (Jul. 21, 2020).

<sup>31</sup> EPA 2024 Draft SI Policy at 15.

## **B. Professional opinions are diverse and should be questioned; no opinion should be set in stone or placed beyond reproach**

In any scientific activity, professionals make decisions based on “best professional judgment,” among other factors.<sup>32</sup> For example, one fundamental ongoing discussion is how to treat uncertainty about human health and environmental impacts at low levels of exposure.<sup>33</sup> As the environment has significantly improved over the past fifty years and exposures have significantly decreased, the relationship from those levels of exposures to harms has become more tenuous, and uncertainties have significantly increased.<sup>34</sup>

This raises a host of questions which this Draft Policy glosses over. Worse, the policy may function to short-circuit the resolution of these questions. For example, should EPA focus on exposures above the lowest measured level of harm or should EPA use a linear no threshold (LNT) model? Depending on the administration, EPA has used one or the other, or sometimes both at different times depending on the context. The choice between these approaches is a quintessential policy call—the choice cannot be resolved by science alone. There simply is no objective scientific truth that compels one approach or the other.

Yet, the Draft Policy could be read to mean that where there’s an open question about the utility of a particular scientific product, or relative utility of competing products, for use in a specific policy context, EPA staff and leadership who argue either side of the question are wading into dangerous waters. This would amount to weaponizing scientific integrity to chill debate on policy questions.

Consequently, the Draft Policy should make clear that its scope is confined to matters best described as the conduct of “science,” that within this scope it does not seek to chill or punish dissenting professional opinions on a particular scientific products’ fitness-for-purpose, and that it does not seek to influence policy decisions, including the choice among competing models as support for agency action—ideally using the LNT example as a hypothetical. The policy should also delineate the boundary between science and policy to give EPA staff and leadership better guidance into which category a particular question or debate would fall. This should include providing a definition of “policy” and “policymaking” and related terms—just as the draft policy defines “science” and a host of related terms incorporating that word.

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<sup>32</sup> The Clean Water Act requires EPA staff to use their “best professional judgment”. See *e.g.*, 33 U.S.C. 1342(a)(1)(B).

<sup>33</sup> See *e.g.*, Institute of Medicine. 2013. *Environmental Decisions in the Face of Uncertainty*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/12568>.

<sup>34</sup> See *e.g.*, the discussion of key limitations and uncertainty of the review of EPA’s review of the air quality criteria and the national ambient air quality standards for photochemical oxidants including ozone. U.S. Environmental Protection Agency, “Review of the Ozone National Ambient Air Quality Standards,” 85 Fed. Reg. 87256, 87277 – 279 (Dec. 31, 2020).



### **C. EPA should make clear that science is not based on majority opinion or “consensus”**

The Draft Policy blurs the line between politics, policy and science. At bottom, the SI Policy operates as if ideas that are merely popular or widely accepted within the scientific community are necessarily true. While the success of both science and politics depends on the free flow of ideas—even unpopular ones—science, unlike politics, is not a popularity contest. Formerly unpopular theories that are “true” did not become more-so by virtue of becoming widely accepted within the scientific community—they were correct all along.

Throughout history “well-accepted” scientific theories have been proven incomplete or simply wrong. In the 16<sup>th</sup> and 17<sup>th</sup> centuries, “geocentrism” was the “settled” scientific view that the Sun revolved around the Earth, which was considered the center of the universe. Copernicus and Galileo introduced the unpopular theory that the Sun was the center of the universe and were persecuted. Still later, this “heliocentric” theory was refined to posit that the Sun is merely the center of Earth’s solar system. Other examples include continental drift, which was formulated in 1912 by Richard Wegener, but took 50 years for the theory to gain credibility; and quantum mechanics, whose foundational insight, the quantization of energy, contradicted the Rayleigh-Jeans law prediction of an “Ultraviolet Catastrophe.” The precepts of quantum mechanics were too bizarre for many physicists reared on classic mechanics to accept but now serve as the basis for countless modern technologies.

Yet, the essence of EPA’s approach to “scientific integrity” is to foreclose “true” theories that defy conventional wisdom from attracting wide acceptance. The language used in the Draft Policy, particularly related to the definition of “inappropriate influence” implies that EPA staff cannot introduce or consider ideas or theories that are outside “well-accepted scientific methods and theories.” Oddly, this key phrase is not defined. More to the point, EPA should not limit scientific debate to conventional wisdom or trending theories. Attempts to do so make a mockery of the scientific method and, it follows, harm the integrity of science.

The SI Policy further weakens the incentive structure that exists within government-led and funded science to question conventional wisdom, champion alternatives theories, and in so doing advance a body of scientific knowledge.

### **D. Draft Policy should make clear that the burden of proof is on the person alleging a violation of the scientific integrity policy**

If EPA wants to mitigate the negative effects created by their Draft Policy, it must make clear that the burden of proof is on the staffer making the allegation.

Combined with the subjective nature of the definitions, leaving open the question where the burden lies potentially places accused employees in the position of proving a negative. Unfortunately, the Draft Policy merely states that EPA's procedures should have state what the steps are for burden of proof.<sup>35</sup> This only increases the importance of avoiding the ire of colleagues.

#### **IV. EPA'S SI POLICY UNDERMINES THE DEMOCRATIC PROCESS AND THE RULE OF LAW, DESTROYS CONFIDENCE IN THE FEDERAL GOVERNMENT, AND LEADS TO WORSE EVIDENCE-BASED POLICIES**

There is no statutory justification for EPA's SI Policy. None of EPA's authorizing statutes mention an SI Policy. Meanwhile, the SI Policy prevents EPA leadership from managing its staff. The result is that EPA's SI Policy diminishes the public's confidence in the EPA and results in worse evidence-based policies.

##### **A. EPA's SI Policy circumvents authority created under EPA's authorizing statutes**

As mentioned, the statutes and regulations that EPA cites do not provide any specific authority to establish such policy. In addition, the environmental statutes that EPA implements delegate authority to the Administrator and other Senate-confirmed leadership, not career staff.

Congress clearly did not intend EPA career staff to restrict (or direct) policy outcomes. However, the aura of fear that is created under EPA's SI Policy usurps the authority from political officials and puts it in the hands of career staff. In addition, science integrity allegations and the information from them can be used by litigants after finalization of EPA's action—giving the “aggrieved” career staffer yet another way to usurp decisions that are statutorily delegated to appointed officials.

Though CEA believes EPA's existing SI Policy should be rescinded, significant modification to the definitions of “delay,” “inappropriate influence,” “interference,” “political interference,” and “suppression” would help mitigate the dangers this Draft Policy poses to the accountability structure of environmental policy making. As previously mentioned, many of the definitions include key undefined terms, are inherently subjective, and this open to widely diverging interpretations. For example, “delay” relates to “purposeful and unreasonable actions” that slow an action down.<sup>36</sup> What is “reasonable” is completely subjective and difficult to prove. Asking a question inherently slows down an action being finalized, so if a manager believes a question is “reasonable” but the staffer does not this could amount to a violation of the Draft Policy.

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<sup>35</sup> EPA 2024 Draft SI Policy at 20.

<sup>36</sup> *Id.* at 5.

Better definitions would limit the Draft Policy's damage and ensure that EPA's SI Policy does not undermine agency leadership or the political accountability structure for optimizing environmental policy.

**B. EPA's SI Policy must clearly state where "science" ends, policy decisions begin and that responsibility for the latter lies with the agency's political leadership**

We applaud Draft Policy for acknowledging that "scientific integrity requires the distinction between scientific information, analyses, and results, and the policy decisions informed by that science."<sup>37</sup> However, while Draft Policy acknowledges there is a distinction, it fails to properly clarify where that distinction is. Without this, concerns over "science" easily bleed into concerns over policy decisions and prevent political officials from implementing their decisions. EPA must also explicitly state within the EPA SI Policy that disagreeing with a policy decision is not a science integrity violation. Providing a hypothetical like the one discussed in Section IX would be helpful.

The value of a particular piece of scientific input to a policymaker depends on the decision being made. The policymaker is in the best position to judge the value of the scientific activity in the context of the policy decision and within the bounds of the law.

EPA should clearly define the role of the apolitical career staffer, regardless of whether that staffer is a "scientist" or not. A career staffer's role is to provide options (often with a recommendation) to the political official for their decision. This role remains constant whether that official is a policy analyst, attorney, or occupies a role requiring a master's degree or PhD in a scientific discipline. If a career staffer disagrees with their political leadership on policy outcomes and does not believe that they can fulfill their duties, then the career official should consider leaving federal service. Career staff are not indentured servants required to maintain their position, but they are required to give their best to inform and then implement leadership's policies regardless of whether they agree with those policies.

Finally, the 2024 Draft SI Policy implies that political officials are not scientists nor technical experts. This often is not the case. Across the Obama, Trump and Biden EPA, many political officials have advanced degrees in hard sciences. EPA must make clear that just because someone is a political official, does not mean they are not also a technical expert.

**V. THE 2024 DRAFT SI POLICY INAPPROPRIATELY EXPANDS THE SCOPE OF EPA'S SI POLICY**

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<sup>37</sup> *Id.* at 19.

The 2024 Draft SI Policy expands the current SI Policy to include economics, other social sciences, and communications. It is inappropriate to include economics, social sciences, and communications and they should be removed from any final SI Policy.

**A. It is inappropriate to apply EPA’s SI Policy to economics and other social sciences**

New to the SI Policy is the inclusion of economics and other social sciences, providing actions such as cost-benefit analysis and the social cost of greenhouse gases the same “protection” as hard science activities. There’s an ongoing debate about whether economics should be considered a science.<sup>38</sup> Treating hard and soft science as equivalents for the purpose of the SI Policy invites mischief, including the politicization of science, circumvention of democratic feedback, and watering down the rigors of evidence-based decision making. Given that cost-benefit analysis, in particular, is often foundational to the exercise of policy discretion, including economics in the SI policy amounts to a thinly-veiled attempt to elevate EPA’s recent policy choices to a special status that would insulate them from revision in future administrations.

Social science theories cannot be tested against observations in the same manner as theories in the physical sciences. With respect to cost-benefit analyses, there are a significant number of assumptions and qualitative guesses that economists make in their analyses. There is therefore even more uncertainty and “professional judgment” than in hard sciences. Combined with the subjectivity inherent in science integrity allegations, it becomes extremely difficult if not impossible to determine when a violation of scientific integrity occurs.

In addition, communications on costs and benefits should not open the door to scientific integrity allegations. Many times, costs cannot be considered as part of the legal authority of the rulemaking and thus communications may need to change what is emphasized or deemphasized for that reason. In addition, there may be certain impacts that carry more policy importance than others. These are decisions that should be made by management, including political staff, and the communications team.

If EPA does not remove economics and social sciences, EPA should specifically include protections to other agencies such as the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA) that analyzes and questions EPA’s economic analyses as part of the rulemaking process. Comments from OIRA should automatically be deemed to be consistent with EPA’s SI Policy.

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<sup>38</sup> See e.g., Alan Y. Wang, The Harvard Crimson, “No, Economics Is Not a Science,” available at <https://www.thecrimson.com/article/2013/12/13/economics-science-wang/> (Dec. 13, 2013).

EPA should also clarify that for statutory designations such as under the Congressional Review Act (CRA), that OMB's determination is a final determination and outside of the purview or authority of EPA and not subject to the SI Policy.

### **B. It is inappropriate to apply EPA's SI Policy to EPA communications**

The Draft Policy expands EPA's SI Policy to include agency communications related to science. This will make it harder, if not impossible, to address legitimate concerns about the poor quality of the agency communications around risks to the environment and human health and safety.

EPA's risk communications are often misunderstood and misused by other regulators and members of the public. EPA publishes materials with caveats that are not properly articulated to (or understood by) by the public. This despite the fact that often these communications come from agency employees who've developed the science on which the pronouncement relies. This frequently results in unnecessary fear and inappropriate actions

So while EPA should improve risk communications professionals, in many cases this will be best handled by agency communications staff, not scientists. Alarming, the 2024 Draft SI Policy deems scientific activity to include communication about scientific matters. The 2024 Draft SI Policy states that EPA must "ensure that Agency employees may communicate their scientific activities objectively without political interference or inappropriate influence."<sup>39</sup> But as mentioned, the definitions of "political interference" and "inappropriate influence" are vague and subjective. For example, "political interference" includes "distortion." With respect to communications, it is difficult to determine when a one-pager is using different terminology and language to express complicated information in a short, digestible way, versus "distorting the science." One could claim that it would be impossible to develop any communications without some form of distortion.

Another longstanding concern that the Draft Policy will exacerbate is in the area of discussion and communication of uncertainty. EPA has a history of either not discussing or downplaying the levels of uncertainty in scientific and other technical analyses. While "downplaying" and "exaggerating" uncertainty has been included since EPA's 2012 SI Policy, this does not seem to have improved EPA's ability to talk candidly about uncertainty and in a way that informs rather than obfuscates the issue for the public.<sup>40</sup> If political leadership or career management wanted to ensure that uncertainties are captured better in public communications—say by changing points of emphasis without changing the information conveyed—under the

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<sup>39</sup> *Id.* at 17.

<sup>40</sup> EPA 2012 SI Policy at 8.

Draft Policy they might find themselves the subject of a scientific integrity complaint and investigation.

Consider the Social Cost of Greenhouse Gases (SC-GHG) metric. To be sure, EPA often includes an uncertainty analysis concerning the precise value of the SC-GHG in an appendix to regulatory impact analyses. However, the level of uncertainty is not typically emphasized in the regulatory impact analysis itself or in communication materials about the underlying rulemaking. This undermines transparency and can mislead the public. Communications materials that appropriately highlight and quantify uncertainty facilitate agency accountability by enhancing the public's understanding of how EPA justifies its own actions and allowing the public to better judge the agency's actions for themselves. Yet, under the Draft Policy, a staffer who worked on the regulatory impact analysis could seemingly alleged that a good-faith effort to more effectively provide the public with important context, in fact constitutes a breach of scientific integrity.

Also consider chemical risk evaluations, a particularly complex area of EPA's work which average citizens and stakeholders alike may have trouble understanding. Emphasizing worst-case scenarios in public communications without prominent disclosures may only scare the public without achieving harm reduction. But an EPA manager who believes that including worst-case scenarios in public communications would be misleading or create unnecessary panic might balk at suggesting that the communication focus instead on the most likely scenarios—least this be miscast as “suppression” or “distortion” or scientific information.

If EPA does not remove public communications from the SI Policy, EPA must make clear that this does not establish a right for agency staff to communicate with the public outside of appropriate channels or without vetting communications through the relevant chain of command, such as the unauthorized release of pre-decisional or nonpublic information.

### **C. It's inappropriate for EPA to shoehorn concepts like diversity, equity, and inclusion and Indigenous Knowledge into its SI Policy**

The draft Policy transforms EPA's SI Policy into a vehicle to promote diversity, equity, and inclusion (DEI)<sup>41</sup> and in some instances requires that EPA consult with Tribal Nations and Indigenous groups to “protect the integrity of the scientific process.”<sup>42</sup> Additionally, the Draft Policy smuggles highly subjective DEI considerations into key definitions through a set of nested definitions that turn core concepts on their head. For example, the Draft Policy defines “scientific integrity” to include “ethical behavior” and, in turn, defines “ethical behavior” to include “equity

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<sup>41</sup> EPA 2024 Draft SI Policy at 22.

<sup>42</sup> *Id.* at 10.

and inclusion.”<sup>43</sup> Regardless of one’s views on the merits of DEI or value of Indigenous Knowledge or Tribal consultations, value laden social justice theories, folk wisdom, and Tribal diplomacy have no place in a policy whose purpose is to ensure that policymakers have access to high quality scientific inputs. The Draft Policy’s inclusion of these extraneous considerations is a brazen attempt to politicize science and risks subordinating technical rigor to progressive ideological hobby horses. Any references to DEI, Tribal consultation or Indigenous Knowledge must be removed.

**VI. THE DRAFT POLICY MUST ENHANCE ITS DISCUSSION OF DATA TRANSPARENCY AND REAFFIRM THAT REPLICABILITY IS THE LOAD STAR OF SCIENTIFIC KNOWLEDGE**

**A. EPA should implement the Trump EPA reforms to enhance transparency and replicability of scientific activities**

In the Trump Administration, EPA implemented several policies to enhance the transparency of science used to justify regulatory action, and to support third party attempts to replicate scientific studies and other technical information. Many of these policies were adopted in response to President Trump’s Executive Order, “Promoting the Rule of Law Through Improved Agency Guidance Documents,”<sup>44</sup> which President Biden rescinded.<sup>45</sup> Despite this, nothing prevents EPA from incorporating the substance of policies like these that strengthen the quality and credibility of scientific claims used in regulatory actions into SI Policy.

Among the policies adopted by the Trump EPA was “EPA Guidance; Administrative Procedures for Issuance and Public Petitions” (EPA Guidance Transparency Policy).<sup>46</sup> This policy ensured that guidance documents were easily available to the public and established procedures for the public to petition EPA to modify or rescind guidance documents. The Trump EPA also established a website at [www.epa.gov/guidance](http://www.epa.gov/guidance) where all the guidance documents were provided.

Additionally, EPA finalized a rule titled, “Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information.” The rule established protocols for how EPA uses highly influential data and scientific information and required that this information be made publicly

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<sup>43</sup> *Id.* at 6, 8.

<sup>44</sup> E.O. 13891.

<sup>45</sup> E.O. 13992.

<sup>46</sup> U.S. Environmental Protection Agency, “EPA Guidance; Administrative Procedures for Issuance and Public Petitions,” 85 Fed. Reg. 66230 (Oct. 19, 2020) (EPA Guidance Transparency Policy).

available.<sup>47</sup> Instead of appealing a district court decision<sup>48</sup> or revising the rule in view of that decision, the Biden EPA decided to rescind the rule completely.<sup>49</sup>

The EPA's Trump-era transparency policies marked an important move toward strengthening the scientific inputs to EPA's regulatory actions by bringing them out of the shadows so they could be tested and scrutinized—contributing to the related goal of increasing public trust in the science underlying the agency's rules. And yet the Draft Policy fails to acknowledge them, let alone seriously consider whether to reinstate them.

The Draft Policy should resurrect these important safeguards by providing that the agency may only rely on scientific studies where the researchers have made underlying data and models publicly available so that third parties can attempt to replicate the study's findings. If a scientific study cannot be replicated by a third party, it calls into question how much the EPA can rely on the study's findings as the "best available science" justifying regulatory action.

### **B. The 2024 Draft SI Policy should enhance the peer review process and ensure that it is consistent with applicable law**

The peer review process, especially for influential and highly influential scientific studies, is critical as these studies often serve as the basis for the EPA's regulatory actions. While the Draft Policy acknowledges the importance of peer review, it does not go nearly enough.

First, the Draft Policy should reference and ensure consistency with the Information Quality Act (IQA). Currently the Draft Policy does not mention the IQA. The omission is puzzling, since the IQA is a statute covering a closely related topic (unlike many of the laws that the Draft Policy cites to). EPA should include relevant statutory language from the IQA in the Draft Policy. If it chooses not to, EPA should address the interaction between its SI Policy and the IQA and address any potential conflicts between their respective provisions.

The Draft Policy's definition of peer review is vague and should be revised to better articulate the elements of peer review. The Draft Policy states that peer review must be performed by "credible individuals who are independent of those who performed the work and who are collectively equivalent in technical expertise to

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<sup>47</sup> U.S. Environmental Protection Agency, "Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information," 86 Fed. Reg. 469 (Jan. 6, 2021).

<sup>48</sup> *Environmental Defense Fund et al. v. EPA*, No. 21-cv-00003 (D. Mon. Feb. 1, 2021).

<sup>49</sup> U.S. Environmental Protection Agency, "Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information; Implementation of Vacatur," 86 Fed. Reg. 29515 (Jun. 2, 2021).



those who performed the original work.” There is, however, no explanation of what makes an individual “credible” or “independent.”

**VII. THE DRAFT POLICY SHOULD PROHIBIT EPA STAFF FROM DEVELOPING EXTERNAL PAPERS DURING BUSINESS HOURS AND CLARIFY THAT AGENCY STAFF WORK DEVELOPED IN THEIR OWN TIME WOULD BE CONSIDERED INTERNALLY DEVELOPED WORK FOR THE PURPOSE OF EPA POLICY DECISIONS.**

EPA staff are responsible to taxpayers who fund their salaries, and they must ensure that their work supports EPA’s mission.

**A. EPA should prohibit staff from working on external scientific activities during work hours or on work computers and bring transparency to third party funding of outside scientific work**

It is CEA’s understanding that in several instances EPA career staff have obtained grants from outside entities to develop research papers and participate in scientific activities without oversight from the EPA. While it does not appear that EPA’s Office of the Inspector General has analyzed the question, to the extent EPA employees do third-party funded work during normal work hours, on EPA property, or using EPA computers or other government resources, this may result in the misuse of government funds or property. Such arrangements may also create conflicts of interest between the employee’s work for the agency and third parties.

At a minimum, the Draft Policy should require staff to disclose the source of funds for any scientific activities for third parties and require EPA to make these disclosures available on its website. In addition, the Draft Policy should provide that staff must prioritize work requests from EPA management over outside scientific work activities during regular business hours.

**B. EPA should establish a policy that scientific products developed by staff related to their work at EPA will not be considered independent activities from the agency**

In their free time, EPA staff has been known to engage in outside scientific activities related to their work at the agency, which in some instances has then cited this work product in agency policymaking decisions, but presented it as “independent” analysis or studies. In such case, the Draft Policy should prohibit EPA from citing an employee’s scientific work as independent of the agency. This would ensure that the public understands whether EPA’s regulatory actions are supported by studies that are truly independent of the agency, or if the agency justifies its regulations with its own studies. The Draft Policy should also provide that employee communications related to such work are federal records subject to FOIA.

## VIII. THE BIDEN EPA HAS A HISTORY OF RUNNING CONTRARY TO EPA’S SI POLICY

While the 2024 Draft SI Policy would be applied prospectively it is concerning that the Biden Administration has run afoul of scientific integrity throughout this administration – seemingly without any repercussions.

On March 31, 2021, EPA Administrator Michael Regan fired all the Science Advisory Board (SAB) and Clean Air Scientific Advisory Committee (CASAC) members – a move without precedent in EPA’s history.<sup>50</sup>

These dismissals appear to be a clear case of retribution because a political official did not agree with scientific activities performed by the SAB and CASAC members. However, there’s no indication that EPA’s Scientific Integrity Official (SIO) has taken any investigative action.

Similar to the SAB and CASAC episode, EPA has revisited the science used in the 2020 Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS).<sup>51</sup> The underlying data has not changed, but EPA succeeded in changing the outcome by directing staff to redo their scientific analysis—and the new analysis came to different conclusions.

The EPA Scientific Integrity Official (SIO) should publicly state whether either of these two episodes violate the SI Policy. This would create precedent around these actions and bring clarity to the SI Policy for career staff and future political appointees.

## IX. ADDITIONAL COMMENTS

### **A. The Draft Policy’s definitions must be clarified to limit uncertainty about what constitutes a violation of scientific integrity and to prevent frivolous complaints and other abuses of the complaint process**

CEA has highlighted vague or otherwise concerning language in the Draft Policy at multiple points throughout its comment. For ease of EPA reviewers, we’ll elaborate on these definitional concerns in the following section.

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<sup>50</sup> U.S. Environmental Protection Agency, “Administrator Regan Directs EPA to Reset Critical Science-Focused Federal Advisory Committees,” available at <https://www.epa.gov/newsreleases/administrator-regan-directs-epa-reset-critical-science-focused-federal-advisory> (Mar. 31, 2021).

<sup>51</sup> U.S. Environmental Protection Agency, “Review of the National Ambient Air Quality Standards for Particulate Matter,” 85 Fed. Reg. 8264 (Dec. 18, 2020).

Beyond poorly defined terms, EPA altogether fails to define many key terms in the Draft Policy, including the concepts “scientific information” and “misinformation.”

*i. Delay*

The Draft Policy defines “delay” as:

cause something to take ***longer than reasonably expected or planned, postpone, or slow the completion or release of something***. Delay in this policy refers to ***purposeful and unreasonable actions*** and not to normal time frames or the time needed for the completion of required processes. (emphasis added).

Unfortunately, many of the words used to define “delay” are vague and open-ended. As a result, virtually anything that contributes to the timeline of a study, analysis, publication, press release, or other work product could be interpreted as a “delay.”

Additionally, there is no competing term with respect to rushing scientific activities or insisting that conclusions are released before the work is done. The implication is that one can violate scientific integrity by preventing finished work from seeing the light of day, but not if one intentionally skips methodological steps to arrive at premature conclusions.

*ii. Ethical behavior*

The 2024 Draft SI Policy defines “ethical behavior” as:

*activities that reflect the norms for conduct that distinguish between acceptable and unacceptable behavior such as honesty, lawfulness, **equity, and inclusion**.* (emphasis added).

EPA should remove “equity” and “inclusion” from the definition of “ethical behavior,” particularly because “ethical behavior” forms part of the definition of “scientific integrity.” It is unclear why EPA proposed to shoehorn gauzy DEI concepts into the definition of “ethical behavior”. This definition seems inconsistent with the Office of Government Ethics’ definition of ethical behavior and appears to introduce highly subjective ideological considerations into the definition of “scientific integrity.” It is unclear how “equity” and “inclusion” contribute to scientific integrity. These open-ended and inapposite terms will likely cause confusion and may result in the scientific integrity complaint process becoming a vehicle for adjudicating Human Resources disputes.

*iii. Inappropriate influence*

The Draft Policy defines “inappropriate influence” as:

*the attempt to shape or interfere in scientific activities, or **the communication about or use of scientific activities or findings, against well-accepted scientific methods and theories without scientific justification.** (emphasis added).*

As mentioned, it is inappropriate to apply scientific integrity to “communication” that occurs outside the context of scientific activities themselves. In addition, policymakers routinely “use” scientific findings in policy decisions, raising the possibility that setting policies that conflict with another person’s interpretation of the weight of scientific evidence could constitute “inappropriate influence” in violation of scientific integrity.

As noted above, the phrase “well-accepted scientific methods and theories” presumes there is an objective measure of what is well-accepted and treats new methods and theories as a threat to science rather than the engine of scientific progress. Yet, it appears that someone could commit “inappropriate influence” merely airing an unpopular theory (or questioning the correctness of a popular one) in a conversation about related “scientific activities or findings.”

*iv. Indigenous Knowledge*

The Draft Policy does not define “Indigenous Knowledge” but states without explanation that it should be included in decision making and is relevant to scientific integrity. The observations and accumulated knowledge of Indigenous people may well serve as a valuable input to decision makers in certain cases. But these inputs are no more scientific in nature than the intergenerational knowledge of a ranching community. EPA provides no basis for elevating one community’s knowledge for special treatment over another, or what role a body of knowledge that was not developed according to the scientific method could play in ensuring scientific integrity.

*v. Interference*

The Draft Policy defines “interference” as:

inappropriate, **scientifically unjustified intervention** in the **conduct, management, communication, or use of science.** It includes  **censorship, suppression, or distortion** of scientific or technological findings, data, environmental information, or conclusions; **inhibiting scientific independence during clearance and review**; scientifically unjustified intervention in research and data

collection; and/or inappropriate engagement or participation in the peer review process or on Federal advisory committees. (emphasis added).

This definition is riddled with subjective terms that are boundless. For example, “scientifically unjustified intervention” is subjective. In addition, it’s unclear what might qualify as “censorship” and “distortion,” terms which are nowhere defined but generally associated with differences of viewpoint and opinion and thus easily read into interactions around multifaceted policy or scientific issues.

*vi. Misinformation*

The term “misinformation” appears once in the Draft Policy and is left undefined. The Draft Policy simply specifies that “scientific information” should be “free of misinformation.” This dichotomy, which implies certain information has no place in scientific debate, creates the potential for censorship of unpopular theories or alternative interpretations of data. Indeed, EPA staff would appear to have broad latitude to deem certain data, analyses, conclusions and theories as “misinformation,” giving them carte blanche to censor such information from larger bodies of scientific information and scientific work products. Contrast that with one of the Draft Policy’s principal goals, to “ensure the free flow of scientific information.” Because “misinformation” is not “scientific information,” there is no free flow for anything deemed the former. What’s more, since “scientific information should be free of misinformation,” this could be used to justify a no-tolerance policy where a large report or other scientific product could become subject to censorship in its entirety simply for including a single piece of information that EPA staff or supervisors deem off-limits. The concept of misinformation cannot be reconciled within a policy that claims the mantle of science, and it’s troubling that EPA thinks this concept has application against its own scientists and technical staff.

*vii. Political interference*

The Draft Policy defines “political interference” as:

***interference conducted by political officials and/or motivated by political considerations.*** It also includes interference by career employees acting under the direction of a political appointee or ***for their own political purposes.*** (emphasis added).

It is unclear why “political interference” needs to be defined when “interference” itself is not allowed. This implies that “political interference” is somehow worse than normal interference.

That said, the Draft Policy should make clear that actions by a career staffer’s political preferences – including their disagreements with the current

administration – are covered under the Draft Policy. Making this clear will help combat public concerns about entrenched bureaucrats obstructing the policy agenda of the president and ensure that insubordinate staff will be held accountable.

*viii. Science*

The Draft Policy defines “science” as:

*the careful study of the structure and behavior of the physical world, especially by watching, doing experiments, and developing theories to describe the results. “Science” and “scientific” are expansive terms that refer to the full spectrum of scientific endeavors, e.g., basic science, applied science, engineering, technology, **economics**, **social sciences**, and statistics. (emphasis added).*

As mentioned throughout this document, EPA should remove “economics” and “social sciences” from the definition of science as neither qualifies within the commonly accepted definition of science.

*ix. Scientific activities*

The Draft Policy defines “scientific activities” as:

activities that involve the development and application of scientific methods and theories in a systematic manner, including, but not limited to: data collection, inventorying, monitoring, statistical analysis, surveying, observations, experimentation, study, research, integration, **economic analysis**, forecasting, predictive analysis, inference, modeling, technology development, scientific assessment, and qualitative analysis. (emphasis added).

Similar to the definition of “science”, “economic analysis” should be removed from the definition of “scientific activities.”

*x. Scientific Information*

Though it appears throughout the Draft Policy, EPA does not define scientific information and other than it “should be free from misinformation,” which is also not defined. EPA should define “scientific information” and provide examples to distinguish it from “misinformation” and from non-scientific information.

*xi. Scientist*

The Draft Policy defines “scientist” as:

anyone who collects, generates, uses, or evaluates scientific data, environmental information, analyses, or products.

The definition of scientist appears to be so broad that it is unclear who would not be considered a scientist at EPA, particularly under the “use” criterion. This definition should be removed or should be revised to more clearly delineate what activities makes one a scientist and which personnel would not qualify.

*xii. Suppression*

The Draft Policy defines “suppression” as:

*Preventing something from being expressed or known.*

Because “suppression” of certain types of information is a violation of scientific integrity, using an expansive dictionary definition for the term is wildly overinclusive (“preventing something from being expressed or known”). The Draft Policy should provide additional context for what qualifies as suppression, what does not, and elaborate on the definition to make it more particularized to the context of the type of information and workplace interactions commonly encountered at EPA.

**B. Including hypothetical examples would help clarify some of the Draft Policy’s ambiguities**

As mentioned above, hypothetical examples would be beneficial to EPA staff and potentially decrease the need for advice and, depending on the situation, prevent both false allegations and false negatives where conduct that falls within the ambit of this policy might be ignored.

There are dozens of scientific decisions that are made throughout the development of a regulatory decision. The hypothetical provided below provides an example of areas where scientific decisions may be made and where potential scientific integrity allegations could be made.

Because the Draft Policy blurs the line between where “science” ends and “policy decisions” start, EPA needs to demarcate those lines through fact specific examples, demystify the allegation process, encourage discussion, and reduce the aura of fear cast by the Draft Policy. While every answer will be dependent on the facts that are presented, even a handful of illustrative examples would reduce uncertainty. In addition, engaging in this exercise might provide EPA insight into which portions of the Draft Policy are inscrutable or unworkable and require significant revisions. To

assist, we are also providing questions that we believe must be answered as part of the hypothetical as well.

Non-federal government Researcher A exposes mice to Chemical Z at exposure level Y for M hours. Under that research experiment, 80 of 100 mice contract cancer. Based on this individual study, Researcher A determines that there is a casual link between Chemical Z and cancer.

Step 2: EPA Staffer B uses Research A's study to support the proposition that Chemical Z likely causes cancer in humans and EPA should develop a regulation to limit exposure. EPA Staffer C raises concerns internally that the Researcher A's single study does not provide sufficient evidence to make the determination that Chemical Z likely causes cancer in humans and recommends that additional study and analysis is necessary. **Did EPA Staffer C violate EPA's SI Policy? Would it matter whether EPA Staffer C is EPA Staffer B's manager?**

EPA Staffer B provides a recommendation to Political Official D that EPA develop a regulation to limit Chemical Z exposure and provides an option to do more research first. EPA Political Official D, based on President W's policies, agrees with EPA Staffer B and directs EPA Staffer B to develop a regulation to set limits on exposure of Chemical Z to humans. **Did EPA Political Official D violate EPA's SI Policy by disagreeing with the concerns raised by EPA Staffer C?**

As EPA Staffer B is drafting regulations, EPA's Scientific Advisory Board (SAB) reviews Researcher A's study and determines that the study does not provide sufficient evidence that Chemical Z likely causes cancer in humans.

EPA Staffer B presents proposed draft regulations to EPA Political Official D. EPA Political Official D believes that EPA Staffer B's recommended regulations are too stringent and may exceed what is legally defensible. EPA Political Official D revises EPA Staffer B's proposed draft regulations. **Did EPA Political Official D violate EPA's SI Policy by not agreeing with EPA's SAB? Is legal defensibility a reason that EPA Political Official D can use as justification that does not violate EPA's SI Policy?**

EPA then provides the draft rule to OMB for interagency review. During the review process, White House Official U revises the regulation to be more stringent than EPA Staffer B's initial draft regulation. The rule is then finalized. **Can an allegation be made against someone that is not at EPA as a violation of EPA's SI Policy? If Political Official D directs EPA Staffer B to change the regulation based on White House Official U, is that a violation of EPA's SI Policy? Is White House**



## **Official U's revisions to the regulations to be more stringent a violation of EPA's SI Policy?**

After an election result in a change in administration, President P then directs new EPA political staff to review Chemical Z to determine whether previously established regulations were appropriate. After review and presentations by career staff, new EPA political staff request EPA Staffer C draft a new regulation that states that there is not sufficient evidence showing that Chemical Z likely causes cancer in humans and rescinds the regulation. **Are changes of policy based on agreeing with different staff or groups within EPA a violation of the SI Policy? What about changing which staff is going to be responsible for drafting the regulation?**

### **C. Draft Policy should not allow other offices or regions to develop different science integrity policies**

The Draft Policy states that it is the EPA Policy to

allow EPA offices and regions to enact stronger Scientific Integrity policies and procedures than are detailed in this Policy. These policies and procedures may not be less stringent than this Policy.

However, EPA provides no justification why Draft Policy is a floor for requirements for scientific integrity nor why different policies or procedures across EPA would be beneficial. The fact that EPA states that this policy is a floor and additional requirements could be necessary implies that Draft Policy does not ensure scientific integrity.

Practically, the existence of different policies across EPA would only add to the confusion as to the meaning and application of many portions of the Draft Policy. There would also be considerable administrative and enforcement burdens. For example, many EPA policies are developed and reviewed across multiple offices, therefore, EPA staff might take an action that is allowed under their specific office policy that is not allowed under another office policy. Which office SI Policy would control? Would the office be responsible for reviewing the SI Policy or would the EPA SIO be the arbiter?

This Draft Policy promises to politicize science, reduce the quality of technical inputs for EPA policymaking, and transfer yet more power from the president's chosen agency leadership to unelected technocrats. For these reasons, it should be withdrawn.

Sincerely,

/s/

Marc Marie

President

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