

RE: Scientific Integrity

The following was written in response to a question posed to NTEU Chapter 280 members in the Union's Blog/Website early in the Obama administration. The question was whether the definition of "scientific integrity" as posited in that blog was "appropriate."

The proposed succinct definition of scientific integrity is perfectly appropriate as an entry in a dictionary and as guidance for academics in general. However, scientific integrity within EPA is about the use of science in a regulatory context, which carries implications beyond whether a *scientist's* work product is based on honest data gathering and interpretation. Managers, who in the regulatory agencies use the work that scientists produce, must also adhere to the same high ethical standard.

Scientific integrity within the Federal Civil Service is tied inextricably to the oath we all – scientists and managers alike - take upon entering the Civil Service, in relevant part:

“I,.....do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same.....”

The Civil Service oath is in essence virtually the same as the Military Service oath, which includes the same words, above, as the Civil Service oath, but in that military oath the next phrases are:

“..and that I will obey the orders of the President of the United States and the orders of the officers appointed over me....”

We in the Civil Service are not bound by oath to “obey the orders of President...and the officers (for which in our case, read “managers”) , appointed over.....” us. That is a crucial difference.

We are, however, bound by oath to “...support and defend the Constitution...against all enemies, foreign and domestic...” What exactly does that mean?

It means that what we in the Civil Service, who have no constitutional authority, but do have a professional responsibility to provide our best judgments and advice to those who do have constitutional authority to create statutory law (the Congress), to administer those laws (the President and his appointees, who create administrative law under delegated authority from Congress) and to adjudicate disputes arising from those laws (the judiciary). Where scientific integrity comes into the picture is that our work (all EPA employees' work) must not be used by us scientists or by our managers to subvert or circumvent the work of others exercising their constitutionally mandated authority.

For example, if a manager orders you to write a justification for his or her decision on what constitutes a safe exposure level for Substance X by shading an interpretation of a scientific study, and doing so means ignoring statutory language, then integrity and your oath require you to refuse.

Within EPA, where science and law are supposed to drive decision making, it is obvious that scientific integrity imposes obligations on non-scientists too. The manager in the example above has no right to issue such an order. Nor does any management official above that manager have such a right. EPA's Principles of Scientific Integrity, first disseminated via memo from Administrator Browner within the Agency on November 24, 1999, stipulate that all EPA employees, not just scientists, are to adhere to the elements of integrity laid out in that memo.

Managers as well as scientists are obligated to perform their duties in conformity with those seven mandates.

The President Obama's "kick off" memo and the OSPT Policy memo are both dismal failures as far as protecting real scientific or professional integrity in a regulatory context – the context in which we practice our professions here. They both merely recite what is obvious about obligations of scientists themselves, everywhere, to behave ethically – they do nothing to protect scientists from abuse by managers. Neither of those documents addresses Principles 5 and 6 of EPA's Principles of Scientific Integrity:

5. Be cognizant of and understand the specific, programmatic statutes that guide the employee's work¹.

6. Accept the affirmative responsibility to report any breach of these principles.

Both the Obama and OSTP memos reflect the same butchering of a protective set of ethical principles that this union encountered within EPA's Office of General Counsel by reciting:

“This memorandum....does not create any right....substantive or procedural...by any party against the United States, its departments....or agents...”

In other words, if it is plain that a manager has ordered a scientist or other professional to create from whole cloth justification for a decision that, in the opinion of the professional - because she or he is “*cognizant of and understands the specific, programmatic statutes that guide the employee's work*” - is in violation of a

¹ When the National Partnership Council finished its work on the EPA Principles of Scientific Integrity and sent the document to the Administrator for sign off, Principle 5 contained a phrase that was deleted by the General Counsel's Office. Principle 5 originally read “*Employees must be cognizant of and understand the specific, programmatic statutes that guide the employee's work, which must be done in conformity with those statutes.*”

programmatic statute, there is absolutely no mechanism by which Principles of Scientific Integrity can be brought to bear in resolving the issue. This, even though that employee has “*Accepted the affirmative responsibility to report any breach of these principles.*”

Neither in the President’s memo or the OSTP memo is there anything that protects employees. The sole effect of these documents is to provide public relations cover for the *management* of EPA, OSHA, FDA, DOE or any other science-related agency to do whatever they want, science and law notwithstanding².

Managers can do what ever is ordered by their superiors to be done to implement a predetermined decision. The only possible remedies for employees faced with these situations – and there have been many – is to become a whistleblower, with all the hazards of that choice.

Or to come to a union willing to fight over scientific integrity and ethics, like the EPA headquarters professionals union has done many times in the past. And we have not fought alone; our union sisters and brothers from the National Federation of Federal Employees, the National Treasury Employees Union, the American of Federation Government Employees, the Engineers and Scientists of California, and the National Association of Government Employees/Service Employee International Union have fought alongside us for the integrity of our professional work in a regulatory context.

This union, when it was first organized and entered into contract negotiations with management, undertook to establish a set of professional ethics, which included a mechanism for adjudicating disputes over how scientific integrity would be interpreted in any particular case. Our goal was – and remains - to protect the right of EPA professionals to conduct their work under the highest ethical standards and in the public interest.

In fact, that was the *primary* reason the union was organized at all, during an administration that was avowedly opposed to environmental regulation and workers’ rights.

² See for example the testimony of Administrator Carol Browner before the House Committee on Science. *106th Congress (1999-2000) House Committee Meetings By Date: Intolerance at EPA. U.S. Congressional Bibliographies. October 4, 2000.* The Administrator proudly proclaimed in her testimony that EPA had adopted a set of Principles of Scientific Integrity while attempting to refute charges that the Agency retaliated against Dr. Marsha Coleman-Adebayo for her work showing severe adverse health problems among miners of vanadium in Africa.

The protection that eventually was produced after sixteen years of struggle, when an administration came to power that purported to favor “partnership” between EPA unions and management, was the 1999 document referred to above. That document falls sadly short of actually providing the protection we originally sought, because it provides no mechanism for adjudicating disputes between management and professionals over what constitutes compliance with the seven principles.

EPA management has consistently declared that creation of an adjudication procedure is “non-negotiable,” even though section 7106 of the Federal Service Labor-Management Statute permits agencies to negotiate over means and methods of doing work. The Statute further requires agencies to bargain over the impact and implementation of its personnel policies, which EPA’s Principles of Scientific Integrity are.

The National Office of our union should consider filing a negotiability appeal on this subject if it wants to support its members who must live under the mandates of the OSTP and Obama “kick-off” memos and any agency’s own Principles of Scientific Integrity without the means of adjudicating disputes arising from them.

If you have not done so, read the History section of NTEU Chapter 280’s website for details of its work to protect your right to perform your work with pride in its ethical quality.

Bill Hirzy