



December 15, 2011

The Honorable Steven Chu  
Secretary, U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

Dear Secretary Chu:

As the Department of Energy (DOE) prepares to submit its draft final policies in response to President Obama's March 2009 Memorandum on Scientific Integrity,<sup>1</sup> the Project On Government Oversight (POGO) submits this letter for your consideration. As you know, the next deadline for submitting draft final policies to the Office of Science and Technology is December 17, which presumably will be followed by another round of revisions and approvals.<sup>2</sup> POGO urges you to consider our recommendations for strengthening your policies. Further, we ask that you specifically address the need for independent, federally conducted investigations of allegations of research misconduct by DOE contractors and grantees.

Founded in 1981, POGO is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government. Thus, POGO has a strong interest in strengthening scientific integrity, increasing contractor accountability, and improving federal research and development.

In fiscal year (FY) 2011, \$10.2 billion was appropriated, and nearly \$13 billion was requested for FY 2012,<sup>3</sup> for DOE research and development and related programs at 17 national laboratories and for extramural research elsewhere. In fact, DOE funds most of its science through contracts or financial assistance agreements. Yet, with this amount of taxpayer dollars going to contractors and grantees, and DOE's tremendous reliance on non-federal institutions for scientific research, there is far too little oversight by DOE. Of particular concern is the fact that serious allegations of research misconduct by scientists employed by DOE contractors are not always independently investigated, as they should be. Instead, research misconduct most often is investigated internally by the contractor, with little or no real oversight by DOE, creating an inherent conflict of interest and jeopardizing the integrity of taxpayer-funded research.

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<sup>1</sup> Memorandum from Barack Obama, President of the United States, to the Heads of Executive Departments and Agencies, regarding Scientific Integrity, March 9, 2009. <http://www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-3-9-09> (Downloaded December 13, 2011)

<sup>2</sup> John P. Holdren, "Next Steps to Ensuring Scientific Integrity," *White House Blog*, October 31, 2011. <http://www.whitehouse.gov/blog/2011/10/31/next-steps-ensuring-scientific-integrity> (Downloaded December 13, 2011)

<sup>3</sup> American Association for the Advancement of Science, "FY 2012 Congressional Action on R&D in the Department of Energy." <http://www.aaas.org/spp/rd/fy2012/doe12c.pdf> (Downloaded December 15, 2011)

As reported by *Nature* magazine on July 6, 2011, there is a troubling case study of DOE's failure to conduct adequate investigations of research misconduct at one of its laboratories.<sup>4</sup>

A prominent scientist at Oak Ridge National Laboratory (ORNL) and his team were accused by, among others, an anonymous peer reviewer in 2006 of fabricating data in a paper they had submitted to *Nature Physics* magazine. Both *Nature Physics* and *Nature* informed ORNL, which initiated an investigation.<sup>5</sup> ORNL concluded that the problems with the data were simply errors, and sent a copy of the investigative report to Patricia Dehmer in the DOE Office of Science. Dehmer stated later in a declaration that she kept the report for a few days, but never read it. She also stated that her staff did not read the report.<sup>6</sup> There are five additional declarations from DOE staff stating they never read or reviewed the investigative report.<sup>7</sup> ORNL, which is operated by the contractor UT-Battelle,<sup>8</sup> then came to Washington to brief Dehmer and her staff. ORNL/UT-Battelle had a two-day meeting with Dehmer and her staff, at the end of which a UT-Battelle representative collected the report. Dehmer said she was "satisfied that UT-Battelle followed the required process to conduct its investigation and that its conclusion was supported."<sup>9</sup>

Incredibly, despite the fact that the research was paid for by the taxpayer and conducted at a DOE-owned facility, a judge recently found the report was not a government record and not subject to the Freedom of Information Act.<sup>10</sup> Also, *Nature's* Eugenie Samuel Reich reports that "scientists who tried to contact the DOE to express concerns about the investigation did not get a hearing."<sup>11</sup> This matter continues to be a topic of debate within the scientific community and of reporting by *Nature*.

As you know, allegations of fabrication are usually extremely complicated and require in-depth examination of the underlying data in question. DOE's failure to conduct an independent investigation is worrisome, and highlights the lack of import the Department has placed on scientific integrity. DOE has no department-wide office of research integrity despite billions spent on scientific research. In contrast, other agencies that fund significant amounts of scientific research, such as the Department of Health and Human Services (HHS), dedicate more resources to scientific integrity. In fact, HHS's Office of Research Integrity (ORI) has 25 professional staff, mostly highly qualified individuals with doctoral, medical, or law degrees, and a budget of over \$9 million.<sup>12</sup>

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<sup>4</sup> Eugenie Samuel Reich, "Misconduct oversight at the DOE: Investigation closed," *Nature*, No. 475, July 6, 2011. <http://www.nature.com/news/2011/110706/full/475020a.html> (Downloaded December 14, 2011) (hereinafter "Misconduct oversight at the DOE: Investigation closed")

<sup>5</sup> Department of Energy, Oak Ridge National Laboratory, Materials Science and Technology Division, "Allegations Refuted." <http://stem.ornl.gov/allegations.shtml> (Downloaded December 15, 2011); Statement of the Independent Investigating Committee Regarding Allegations of Research Misconduct at ORNL. [http://stem.ornl.gov/doc/Ext\\_Cmte\\_Invest\\_Stmt\\_0805.pdf](http://stem.ornl.gov/doc/Ext_Cmte_Invest_Stmt_0805.pdf) (Downloaded December 15, 2011)

<sup>6</sup> Declaration of Patricia M. Dehmer, 1:09-cv-10883-nmg, Document 36-4, 06/28/10, U.S. District Court, District of Massachusetts.

<sup>7</sup> Declaration of Helen Kerch, Case 1:09-cv-10883-nmg, Document 39, Filed 06/28/10, U.S. District Court, District of Massachusetts.

<sup>8</sup> UT-Battelle, "Management Contractor for the Department of Energy's Oak Ridge National Laboratory." <http://ut-battelle.org/> (Downloaded December 13, 2011)

<sup>9</sup> Declaration of Patricia M. Dehmer, 1:09-cv-10883-nmg, Document 36-4, 06/28/10, U.S. District Court, District of Massachusetts.

<sup>10</sup> Memorandum & Order, Eugene Samuel Reich v. U.S. Department of Energy and Oak Ridge National Laboratory, Civil Action No. 09-10883-NMG, U.S. District Court, District of Massachusetts. <http://pacer.mad.uscourts.gov/dc/cgi-bin/recentops.pl?filename=gorton/pdf/reich%20v%20dept%20energy%20sj%202%20mo.pdf> (Downloaded December 15, 2011)

<sup>11</sup> "Misconduct oversight at the DOE: Investigation closed"

<sup>12</sup> Department of Health and Human Services, "Office of Research Integrity." <http://ori.hhs.gov/> (Downloaded December 13, 2011)

ORI has a good model for overseeing investigations of scientific misconduct conducted by a federally funded institution. ORI thoroughly reviews all of the actions by the institution, and sometimes makes a different determination. In some cases, ORI will ask for more evidence, request that a case be reopened, or conduct its own investigation. As reported by *Chemical and Engineering News*:

For example, in the Poehlman case, which involved ORI, the University of Vermont made 30 findings of misconduct, but after reviewing all of the evidence, ORI added another 20 findings, Pascal notes.

ORI also makes their findings of wrongdoing public, which creates a deterrent and helps to warn other agencies and institutions (the agency does not release the identity of the scientists).<sup>13</sup>

According to ORI's 2008 annual report, "In 2008, ORI opened 17 new cases and closed 17 cases, with 35 cases remaining open at the end of the calendar year, the same number that ORI had open at the end of 2007." Furthermore, "of the 17 cases closed by ORI, 13 cases resulted in sustained findings of research misconduct and/or [Public Health Service] administrative actions against the respondents." Regarding the 35 cases still open at the end of 2008, ORI said "nearly all appear likely to lead to findings of research misconduct." ORI also assists the HHS Office of General Counsel in litigation and in administrative hearings.<sup>14</sup> DOE's approach to this important challenge is scattered and fragmented, with total dependence on self-reporting of wrongdoing by contractors. Fifteen years ago, the Government Accountability Office (GAO) described DOE's management culture as one of "least interference" based on an "undocumented policy of blind faith in its contractors' performance."<sup>15</sup> The situation has apparently not changed since the GAO's report.

In 2006, a DOE official said the Department receives only about one research misconduct allegation per year.<sup>16</sup> This should not be construed as meaning there is very little such misconduct, but rather DOE is not aware of the actual number of allegations, since DOE-funded institutions encourage or require internal reporting and do not currently report all allegations to DOE. Certainly, the absence of an independent federal oversight function creates a chilling environment for conscientious researchers to step forward.<sup>17</sup> An *ORNL Reporter* article from 2000 said the results of an ORNL survey found that "Almost half of the staff members who say they saw misconduct did not report it because of fear of management retaliation." While this finding related to misconduct generally, rather than research misconduct specifically,<sup>18</sup> the fear of retaliation is likely present in the research misconduct context. Additionally, DOE-funded institutions do not currently report on all allegations of research misconduct.

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<sup>13</sup> Susan R. Morrissey, "Federal agencies handle fabrication, falsification and plagiarism allegations differently, but all take claims seriously," *Chemical and Engineering News*, Vol. 84, No. 45, November 6, 2006, pp. 18-22.

<http://pubs.acs.org/cen/government/84/8445gov1.html> (Downloaded December 13, 2011) (hereinafter "Federal agencies handle fabrication, falsification and plagiarism allegations differently, but all take claims seriously")

<sup>14</sup> Department of Health and Human Services, *Office of Research Integrity 2008 Annual Report*, 2008.

[http://ori.hhs.gov/documents/annual\\_reports/ori\\_annual\\_report\\_2008.pdf](http://ori.hhs.gov/documents/annual_reports/ori_annual_report_2008.pdf) (Downloaded December 13, 2011)

<sup>15</sup> General Accounting Office, *Department of Energy: Contract Reform Is Progressing, but Full Implementation Will Take Years* (GAO/RCED-97-18), December 1996, p. 2. <http://www.gao.gov/archive/1997/rc97018.pdf> (Downloaded December 13, 2011)

<sup>16</sup> "Federal agencies handle fabrication, falsification and plagiarism allegations differently, but all take claims seriously"

<sup>17</sup> Many believe that there is a significant amount of underreporting of research misconduct. For a discussion, see: Nicholas H. Steneck, University of Michigan, *Assessing the Integrity of Publicly Funded Research*. [http://www-personal.umich.edu/~nsteneck/publications/Steneck\\_N\\_02.pdf](http://www-personal.umich.edu/~nsteneck/publications/Steneck_N_02.pdf) (Downloaded December 13, 2011)

<sup>18</sup> Oak Ridge National Laboratory, "Last LMC ethics survey: Getting better," January 2008.

<http://www.ornl.gov/info/reporter/no11/lastlmc.htm> (Downloaded December 13, 2011)

Federal Policy on Research Misconduct (FPRM), finalized in 2000, upon which the current DOE policy is based,<sup>19</sup> stipulates a reliance on contractors and grantees to investigate internal allegations of misconduct, but also dictates that the federal agency has ultimate oversight responsibility.<sup>20</sup> We are deeply concerned that DOE has not fulfilled its responsibility for ultimate oversight, as specified by the FPRM. It is critical that DOE address these issues in its scientific integrity plan in response to the Scientific Integrity Memorandum, and if necessary in rulemaking. Indeed if scientific integrity is not strengthened for all federally funded science, including the vast amount of research done by non-federal entities, then the promise of the Scientific Integrity Memorandum will not be fulfilled.

We urge you to consider the recommendations we have previously made for strengthening scientific integrity,<sup>21</sup> as well as those made by other advocates such as the Union of Concerned Scientists,<sup>22</sup> as you finalize your plan. POGO also recommends DOE include the following in its plan to address the specific concerns we raise herein:

- DOE must create a process to thoroughly oversee and review all investigations of scientific misconduct conducted by DOE-funded contractors and institutions, fashioned after the HHS ORI process.
- DOE also must encourage and be equipped to receive complaints directly and investigate initially in some cases, particularly when concerns about an internal investigation by the institution are indicated, whether due to the nature of the complaint, the identity of the whistleblower, the potential conflict of interest, or other concern.
- DOE should establish an Office of Research Integrity modeled after the HHS ORI, which should report directly to the Secretary of Energy. Another alternative POGO could support is the creation of a dedicated staff within the DOE OIG that would specialize in handling research misconduct allegations and reviewing contractor-conducted investigations.
- DOE must enforce the requirement that documentation related to internal reports of scientific misconduct conducted by contractors be fully reported to DOE.<sup>23</sup> In addition, all documentation relating to investigations should be deemed government records and available to the public.
- DOE should require all recipients of federal funds for science to report on the number and nature of allegations of scientific misconduct received and the subsequent actions taken to inquire, investigate, and adjudicate. This information also should be made available to the public, since it is the American taxpayers who fund this science.

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<sup>19</sup> 10 U.S.C § 733

<sup>20</sup> 10 C.F.R. § 600.31

<sup>21</sup> Public Comments of Angela Canterbury, Director of Public Policy, Project On Government Oversight, Submitted to the President's Council of Advisors on Science and Technology (PCAST), November 4, 2010. <http://www.pogo.org/pogo-files/testimony/public-health/ph-iis-20111104.html>

<sup>22</sup> Union of Concerned Scientists, "President's Scientific Integrity Directive Floor," December 17, 2010. [http://www.ucsusa.org/assets/documents/scientific\\_integrity/SI-Directive-Floor-Response.pdf](http://www.ucsusa.org/assets/documents/scientific_integrity/SI-Directive-Floor-Response.pdf) (Downloaded December 13, 2011)

<sup>23</sup> 10 CFR § 600.31

In addition, we ask that you ensure the recommendations from the 2000 DOE IG's *Inspection on the Review of Scientific Integrity Issues at Lawrence-Berkeley Laboratory* are fully implemented:

[The IG] also recommended that the Director of the Office of Procurement and Assistance Management, in coordination with the General Counsel, modify the Department's current management and operating contracts in order to:

- incorporate those provisions of the Department's policies and procedures for addressing alleged scientific misconduct that describe contractor responsibilities for conducting inquiries and investigations when these policies and procedures are issued; and
- require the Department to recover funds used to support research when the Department has determined that there has been scientific misconduct.<sup>24</sup>

Lastly, while you are implementing your new scientific integrity policy plan, DOE should work with HHS ORI to independently investigate the unresolved allegations of research misconduct at Oak Ridge National Laboratory.

If you have any questions or need further information, please contact Senior Investigator Peter Stockton (pstockton@pogo.org) or Director of Public Policy Angela Canterbury (acanterbury@pogo.org) at (202) 347 -1122.

Sincerely,



Danielle Brian  
Executive Director  
Project On Government Oversight

cc: DOE Office of Inspector General  
DOE Under Secretary for Science Steven E. Koonin  
HHS ORI Acting Director Donald Wright  
Office of Science and Technology Policy  
House Appropriations Energy and Water Subcommittee  
House Armed Services Strategic Forces Subcommittee  
House Energy and Commerce Subcommittee on Oversight and Investigations  
House Oversight and Government Reform Committee  
House Science, Space and Technology Committee  
Senate Appropriations Energy and Water Subcommittee  
Senate Armed Services Strategic Forces Subcommittee  
Senate Commerce, Science and Technology Science and Space Subcommittee  
Senate Homeland Security and Governmental Affairs Contracting Oversight Subcommittee

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<sup>24</sup> Department of Energy, Office of the Inspector General, *Inspection Report: Inspection on the Review of Scientific Integrity Issues at Lawrence-Berkeley Laboratory* (DOE/IG-0478), July 2000.

<http://energy.gov/sites/prod/files/igprod/documents/CalendarYear2000/ig-0478.pdf> (Downloaded December 13, 2011)