STENY H. HOYER
DEMOCRATIC WHIP
5TH DISTRICT, MARYLAND

Congress of the United States
House of Representatives
Washington, DC 20515–6502

June 7, 2017

Mr. David G. McIntosh
Acting Associate Administrator for Congressional and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460-0001

RE: EPA Employee #: (b) (6) [redacted]

Dear Mr. McIntosh:

This letter is written to you on behalf of (b) (6) [redacted]. (b) (6) [redacted]s contacted me regarding (b) [redacted] concerns about workplace harassment allegations placed against (b) (6) [redacted] request to learn the status of the EPA investigation into the matter.

Enclosed is a copy of (b) [redacted] privacy release form and supporting documentation. In view of the issues that have been raised, I would greatly appreciate your looking into this matter and advising Ms. Stefanie Carey Barone of my Southern Region District Office at 4475 Regency Place, Suite 203, White Plains, MD 20695, of your findings. The phone number is: 301-843-1577.

Looking forward to hearing from you and with kindest regards, I am

Sincerely yours,

STENY H. HOYER

SHH:md05

DEMOCRATIC WHIP OFFICE:
H-148, THE CAPITOL
WASHINGTON, DC 20515
(202) 225-3130
(202) 226-0663 (FAX)
http://democraticwhip.house.gov

WASHINGTON, DC OFFICE:
1705 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4131
(202) 225-4300 (FAX)
http://www.hoyer.house.gov

GREENBELT DISTRICT OFFICE:
U.S. DISTRICT COURT HOUSE
6500 CHERRYWOOD LANE, SUITE 310
GREENBELT, MD 20770
(301) 474-0119
(301) 474-4697 (FAX)

WHITE PLAINS DISTRICT OFFICE:
4475 REGENCY PLACE, SUITE 203
WHITE PLAINS, MD 20695
(301) 843-1577
(301) 843-1331 (FAX)

Office of Congressman Steny Hoyer (MD-5)

Privacy Release Form

Under the Federal Privacy Act of 1974, we must have a signed privacy release form identifying your problem and an attached signed letter which clearly outlines the issue and the remedy you are seeking. This provides our office permission to look into the matter on your behalf. Please send the **privacy release form and letter of explanation** to the appropriate District Office via US Postal Service, fax or deliver it in person. Please include any relevant identifying information and supporting documents which relate to your inquiry.

Please return via mail, fax or in person to the appropriate office:

If you live in Prince George's, Anne Arundel or Calvert County

Congressman Steny Hoyer
US District Courthouse
6500 Cherrywood Lane, Suite 310
Greenbelt, MD 20770
Phone: 301-474-0119
Fax: 301-474-4697

If you live in Charles or St. Mary's County

Congressman Steny Hoyer
401 Post Office Road, Suite 202
Waldorf, MD 20602

Phone: 301-843-1577
Fax: 301-843-1331

Date: April 11, 2017

Please provide applicable identifying information:

- EPA Employee

~~Social Security~~ Number: (b) (6) [redacted] te of Bi (b) (6) [redacted]

Case Claim Number: (from agency involved – VA/OWCP etc) [redacted]

Immigration Case Number: — Alien Number: —

Mortgage Loan Number: —

I request assistance in resolving the following problem I am having with **(LIST AGENCY)**

U.S. Environmental Protection Agency

Explain the problem including dates, locations, names: Use reverse side if necessary and include copies of applicable supporting documents and a signed letter explaining the nature of your concerns:

On March 29, 2017 I opened my e-mail at work (b) (6) [redacted] (b) (6) [redacted] and found: EPA Order 4711 Fact Finding into Workplace Harrassment Allegations. I have attached a letter to you that gives specific information about the problem and assistance I am requesting.

PRINT NAME: I, (b) (6) [redacted] **, hereby authorize Congressman Steny H. Hoyer and his staff to contact any federal agency relevant to the matter described here, to receive and review any information contained in my file and, if necessary, to forward any pertinent correspondence sent by me regarding this matter.**

Signature (b) (6) [redacted]

(b) (6) [redacted]

City (b) (6) [redacted]

Telep [redacted] Email: [redacted]

* Because of the government-wide data breach, I do not disclose my SSN unless absolutely

(b) (6)

The Honorable Steny Hoyer
ATTN: Mr. Terrance Taylor
(terrance.taylor@mail.house.gov)
U.S. District Courthouse
6500 Cherrywood Lane, Suite 310
Greenbelt, MD 20770

Dear Mr. Hoyer,

I am a U.S. Environmental Protection Agency (EPA) employee and constituent of yours. I need your help stopping a politically-motivated investigation and protecting me as an EPA whistleblower. Below are the details, including supporting documentation such as the notice of the investigation.

I started at EPA in (b) (6) er the years I became work friends with a woman named (b) (6) (not my supervisor, however). (b) (6) (b and I would have normal water-cooler conversation about politics and life. (b) and I were both scuba divers, so we had much to talk about. (b) (6) d also frequently tease me about politics and positions of President Obama, as (b) was a Republican and I was not. I took it all as good-natured political ribbing and did not think much of it.

After the recent election of President Trump, however, everything changed.

I made a couple of innocuous comments to (b) about President Trump, much as (b) said to me about President Obama throughout his presidency. For example, when I sav (b) (6) n inauguration day in the (b) (6) Whole Foods Market, I mentioned that (b) must be happy about the Trump victory. (b) (6) s going home to watch it on TV and drink champagne. I also once handed (b) a Washington Post *Express* newspaper with Trump on the cover and the story headline of "Chaos." (b) smiled in response. Finally, I once aske (b) if (b) was going to watch the State of the Union address and made a hand gesture imitating the late night talk shows' impressions of President Trump. In response to these few innocuous comments, the agency has now initiated an investigation for "harassment" under EPA Order 4711 against me for my First Amendment-protected conversations.

In addition to my concerns about being attacked for my liberal political views and protected First Amendment speech, I also am being investigated for calling out racism within the agency. Specifically, (b) (6) e made derogatory comments about former presidential candidate Ben Carson for his skin color, and would periodically make derogatory comments about President Obama's skin color. In one situation (b) (6) d I were discussing Dr. Ben Carson's famous surgery separating conjoined twins, which I had the opportunity years ago to help videotape at Johns Hopkins Hospital. In response (b) told me: "I would never go to a black doctor." I closed (b) door and then suggested to (b) (6) should keep those type of

racist comments to (b) (6) and not let anyone hear them. (b) (6) told me that (b) (6) didn't care who heard them. The notice of investigation states that has been initiated, in part, because I called out (b) (6) racist comments. No one should be attacked for standing up against racism, which is exactly what EPA is doing to me.

In addition, I also complained about deficiencies in EPA's information technology (IT) systems and contracts both to my management and twice to the EPA Inspector General. In response to my whistleblowing, my manager threatened my ability to advance in the agency. Another time (b) (6) threatened a written reprimand if I continued to "complain" about ongoing computer issues that interfered with my ability to do my work. An IT manager once admitted to me that at the time, the prime contractor did not have any performance measures in the contract (this may no longer by the case). I believe that this investigation could be, in part, retaliation for my whistleblowing about wasteful IT spending.

Finally, I want to note that the "fact finder" in this investigation is by no means independent. The process set up by EPA appoints a fact-finder from the Labor and Employee Relations (LER) staff. LER staff members provide advice to, and advocate for, management against employees. The so-called "fact finder" appointed in my investigation has the same direct supervisor as the LER specialist advocating for this investigation to proceed. It is impossible for them to be neutral as paid advocates working directly for management. EPA Order 4711 specifically states that the fact finder must not be an advocate for either party, but when my Union representative raised this objection, management ignored it and plowed ahead with this politically-motivated investigation.

In this climate of overt attacks on federal employees, and given that my accuser is a supervisor and a Republican, I need your help. I fear for my job. This investigation is clearly retaliation for my political views or my complaints about fraud, waste, and abuse over IT spending, or both. Now that Mr. Trump is in office I am being attacked for expressing my protected views. If you could please help bring pressure on EPA to stop this politically-motivated investigation and protect me as an EPA whistleblower, I would be tremendously appreciative.

You can reach me for more details at (b) (6) Please copy my Union representative, (b) (6) on any correspondence regarding this matter. I have included a privacy release, as requested.

(b) (6)

(b) (6)

Attachments: (1) EPA Order 4711 Notice of Investigation
(2) EPA Order 4711
(3) Privacy Release

Carey, Stefanie

From: Taylor, Terrance
Sent: Tuesday, April 25, 2017 11:25 PM
To: Abouchar, Keith; Notter, Jim
Cc: Carey, Stefanie
Subject: Fwd: (b) (6) [redacted] Request for Assistance (resend with corrected email address)
Attachments: (b) (6) [redacted] Congressional to Rep Hoyer plus attachments--2017-04-12.pdf; ATT00001.htm

We received this case from NTEU. Should we send this over to Cummings' oversight staff to review?

TT

Sent from my iPhone

Begin forwarded message:

> **From:** "Taylor, Terrance" <terrance.taylor@mail.house.gov>
> **To:** "Notter, Jim" <Jim.Notter@mail.house.gov>, "Abouchar, Keith" <Keith.Abouchar@mail.house.gov>
> **Subject: Fwd:** (b) (6) [redacted] **t for Assistance (resend with corrected email address)**
>
> Your thoughts
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Taylor, Terrance" <terrance.taylor@mail.house.gov>
> > **To:** "Bossart, Betsy" <Betsy.Bossart@mail.house.gov>
> > **Subject: Fwd:** (b) (6) [redacted] **t for Assistance (resend with corrected email address)**
> >
> > Request for assistance from (b) (6) [redacted] Should I send this to SCB?
> >
> > Sent from my iPhone
> >
> > Begin forwarded message:
> >
> > > **From:** [redacted] (b) (6)
> > > **To:** "Taylor, Terrance" <terrance.taylor@mail.house.gov>
> > > **Cc:** (b) (6) [redacted] "
> > > (b) (6) [redacted] >
> > > **Subject:** (b) (6) [redacted] **t for Assistance (resend with corrected email address)**
> > >
> > > Hi Terrance,

Thank you so much for talking with me yesterday about (b) (6) [redacted] situation at EPA. I've attached her request for Mr. Hoyer's assistance and included associated documentation. The last two pages of her inquiry are the privacy release you requested.

Copied on this message are (b) (6) [redacted] and my colleague, (b) (6) [redacted]s (b) (6) [redacted] We're assisting (b) (6) [redacted] in this matter as her Union representatives. In her letter (b) (6) [redacted] authorizes us to be kept in the loop as you move forward on this.

These EPA investigations are designed to quickly railroad EPA employees. We have, therefore, a very short time line. Since we're requesting that this political witch-hunt be ended, it might be helpful if the assigned staff member in your office could call the agency and request that the investigation be paused until Mr. Hoyer's concerns are addressed.

Thank you again for your and Mr. Hoyer's help. Once you assign a staff member, please ask her/him to reach out to me and (b) (6) [redacted] for any additional information that s/he may need.

Best regards,
Joe

(b) (6) [redacted]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, DC

March 29, 2017

OFFICE OF
RESEARCH AND
DEVELOPMENT

MEMORANDUM

SUBJECT: EPA Order 4711 Fact-Finding Into Workplace Harassment Allegations

FROM: (b) (6) [redacted]

TO: [redacted]

This is to inform you that allegations of workplace harassment have been made against you under EPA Order 4711, *Procedure for Addressing Allegations of Workplace Harassment*. It has been alleged that you harassed (b) (6) [redacted] d on political affiliation, to include incidents on February 28 and March 23, 2017. It was also reported that you alleged that (b) (6) [redacted] has made racist comments over the last 8 years.

In accordance with EPA Order 4711, I have designated (b) (6) [redacted] o act as fact-finder regarding these allegations. Pursuant to EPA Order 4711, and subject to the applicable laws and regulations, all Agency employees and officials are required to cooperate with a fact-finding into alleged workplace harassment.

You will be contacted shortly by (b) (6) [redacted] who will interview you regarding this alleged incident. (b) (6) [redacted] is also authorized to prepare summaries of interviews and obtain signatures from interviewed persons attesting to the accuracy of the summaries, or obtain signed statements, affidavits, declarations, etc., as appropriate.

The confidentiality of harassment allegations and the identity of all involved, particularly the affected person and alleged harasser will be protected to the extent possible, and will only be revealed to persons with a need to know.

I have attached additional information regarding fact-finding interviews under EPA Order 4711.

Please be aware that retaliation against any person who reports harassment, or who participates in a fact-finding, is prohibited and may result in disciplinary action, including removal from employment.

At the conclusion of the fact finding, (b) (6) [redacted] l report (b) (6) [redacted] findings to me. I will consider the information obtained in the fact-finding and make a determination on whether workplace harassment has occurred and, if so, what corrective action is warranted. You will be informed of my decision in this matter.

The information or records gathered during the fact-finding will be treated as confidential agency records and maintained in accordance with the applicable record retention laws, regulations, and policies.

If you have any questions regarding this matter, please contact (b) (6) [redacted] 6 [redacted]

EPA ORDER

Classification No.: 4711
Approval Date: 11/20/2015
Review Date: 11/20/2018

PROCEDURE FOR ADDRESSING ALLEGATIONS OF WORKPLACE HARASSMENT

I. PURPOSE.

All employees shall be treated fairly and equitably and without discrimination. The purpose of this order is to prevent and address incidents of harassment (as defined herein) in the U.S. Environmental Protection Agency's (EPA or agency) workplace and to provide a consistent and effective procedure for responding to allegations of harassment. This Order supplements EPA's Anti-Harassment Policy and established a procedure for:

- Prompt reporting of allegations of harassment;
- Prompt inquiry into allegations of harassment, and
- Prompt and appropriate corrective action as necessary.

II. BACKGROUND.

This order is not intended to replace or impede the Equal Employment Opportunity Commission discrimination complaint process found at Title 29 C.F.R. Part 1614, the discrimination complaint process in EPA Order 1000.31A4, *Discrimination on the Basis of Sexual Orientation, Status as a Parent, Marital Status or Political Affiliation*; the Agency's administrative grievance process set forth in EPA Order 3110.8 A2, *EPA Administrative Grievance System*; or negotiated grievance processes for employees in collective bargaining units, and it does not alter the filing deadlines for invoking those processes. This order sets forth a procedure separate from those processes. Complaints of harassment may be made under this order irrespective of whether any other applicable process is invoked, and may be made in addition to other applicable processes.

III. APPLICABILITY.

This order applies to allegations of harassment based on race, color, sex (including pregnancy, sex stereotyping, gender identity or expression), national origin, religion, age, disability, prior protected Equal Employment Opportunity activity, sexual orientation, status as a parent, marital status, political affiliation, and protected genetic information.

This order, and the procedures contained herein, also apply to other types of harassment (e.g. actions that are threatening, intimidating, bullying and/or disturbing) but not alleged to be based on the protected classes listed above.[1]

This order applies to all EPA employees and applicants for employment, and to other persons included in the definition of "affected person" described in this order, and will be used by the agency to address allegations of workplace harassment regardless of who makes them or who the alleged harasser may be.

The information contained in this order does not create any independent rights and/or obligations enforceable in law or equity in any civil or criminal matter. This order and any procedures contained herein may not be construed to limit the otherwise lawful investigative, administrative, or prosecutorial prerogatives of the agency, its Office of the Inspector General, or the U.S. Department of Justice. The information contained in this order also does not supersede existing collective bargaining agreements and/or related statutory rights.

A. RELATIONSHIP OF THE PROCEDURES PROVIDED UNDER THIS ORDER TO THE EQUAL EMPLOYMENT OPPORTUNITY AND GRIEVANCE PROCESSES.

1. The procedures provided under this order do not extend, modify or otherwise alter the procedures, including the timeframes, provided in the EEO process, the grievance processes, or any other complaint process available to agency employees, former employees or applicants for employment.

2. This order creates an administrative process for reporting, inquiring into and, as needed, taking action to address complaints of harassment, as defined in Section IV, and that process is independent of the EEO process.

3. Reports of harassment related to an EEO complaint that come to the attention of a supervisor, manager, or agency Human Resource Official, require initiation of an inquiry based upon this order and will not impact the disposition of a complaint filed in another forum. Employees reporting a claim of harassment relating to the protected EEO categories described above, should be informed of the applicable EEO process.

4. Affected persons may report incidents of harassment under this order even if they initiate the EEO process through the Agency's Office of Civil Rights or if they invoke any other complaint procedure.

5. For further details on how to file an EEO complaint, in addition to or independent of the procedures in this order, please consult http://www.epa.gov/civilrights/t7filecmplt.htm.

6. Affected persons who are included in bargaining units seeking information on deadlines and other procedures for filing a grievance, independent of the process provided in this Order, may consult applicable collective bargaining agreements, and consult with applicable union representatives. Federal employees not included in a bargaining unit, who are seeking

[1] Such as bullying of an employee based on his/her grade (GS) level or educational background, union activity, etc.

information on deadlines and other procedures for filing an administrative grievance, may consult applicable procedures at

(b) (6) [redacted]

B. OTHER TYPES OF HARASSMENT AND GENERAL MISCONDUCT

1. Affected persons may be subject to incidents of harassment that are not based on one of the protected classes identified in this order. These include actions that are threatening, intimidating, bullying[2] and/or disturbing but are not alleged to be or determined to be based on race, color, sex (including pregnancy, sex stereotyping, gender identity or expression), national origin, religion, age, disability, prior protected EEO activity, sexual orientation, status as a parent, marital status, political affiliation, and protected genetic information. Assignment of work by a supervisor, a difference of opinion, a disagreement on a work-related matter, or any other similar communication that is expressed in a professional manner, are not considered harassment.

2. Affected persons who believe they have been subjected to these other forms of harassment or misconduct not based on protected class should still immediately report the matter to a first-line supervisor or, if the first-line supervisor is the alleged harasser, a higher-level supervisor or manager in his or her chain of command, or an agency HR official. Such reports will be handled through procedures contained in this order.

C. THREATS OF VIOLENCE[3]

1. All affected persons should report threats of violence, an actual assault, or any acts of violence immediately to agency security officials, local law enforcement, and the OIG.

2. All supervisors, managers, and agency HR officials must report threats of violence, and actual assault, or any acts of violence immediately to agency security officials, local law enforcement, and the OIG.

IV. DEFINITIONS.

For purposes of this order only, the following definitions apply:

A. Harassment. Any inappropriate, unwelcome conduct, verbal or physical, based on an individual's race, color, sex (including pregnancy, sex stereotyping, gender identity or expression), national origin, religion, age, disability, prior protected EEO activity, sexual orientation, status as a parent, marital status, political affiliation, protected genetic information, or other conduct that is threatening, intimidating, and/or bullying when the conduct can reasonably be considered to adversely affect the work environment or terms and conditions of the affected person's employment, or an employment decision impacting upon an affected person is based on the affected person's acceptance or rejection of such conduct.

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[2] Bullying may rise to the level of harassment as defined in this order.

[3] Refer to EPA Order 1400.1 A2 EPA POLICY FOR PREVENTING VIOLENCE IN THE WORKPLACE.

Examples of harassment may include, but are not limited to:

1. Oral or written communication related to membership in one of the groups set forth above that contains offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the groups set forth above.

2. Nonverbal conduct, such as staring or leering that can objectively be construed as harassment based on the categories listed above.

3. Physical conduct, such as assault or unwanted touching.

4. Distribution or display of visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

B. Sexual Harassment. Sexual harassment is harassment that involves conduct of a sexual nature, harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature. This occurs when:

1. Submission to such conduct is made explicitly or implicitly a term or condition of an affected person's job, pay or career (i.e. Quid Pro Quo);

2. Submission to or rejection of such conduct by an affected person is used as a basis for career or employment or other work-related decisions affecting that affected person, or

3. Such conduct has the purpose or effect of unreasonably interfering with an affected person's performance or creates an intimidating, hostile or offensive environment.

NOTE: Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

C. Affected Person. A federal employee, an applicant for employment, a grantee employee, a contractor employee, an EPA Federal Advisory Committee Act member, a Senior Environment Employee enrollee, a student volunteer or intern, or a Public Health Service Officer who believes he or she has been subjected to harassment in the course of his or her employment or performance of agency-related functions.

D. Agency Human Resource Official. A Human Resource Officer/Project Management Officer, a headquarters Workplace Solutions staff member, or a Labor and Employee Relations Specialist. Referred to as agency HR official.

E. Agency Security Officials. EPA security personnel or Federal Protective Service.

F. Alleged Harasser. Any person, regardless of his or her employment relationship with the Agency, who allegedly subjected an affected person to workplace harassment. An alleged harasser could be a manager or supervisor, subordinate, co-worker, or non-agency employee.

1. An affected person who believes he or she is being harassed should immediately report the matter to a first-line supervisor, or, if the first-line supervisor is the alleged harasser, then to the next manager in his or her chain of command, a higher-level supervisor or an agency HR official. Affected persons are required to provide a written account of such alleged conduct as soon as possible after reporting the alleged harassment.

2. Witnesses to alleged incidents of harassment may also report these incidents pursuant to the procedures contained in this order. Witnesses should report and may be expected to, provide a written description of the alleged incident(s) of harassment to his or her own supervisor or manager, to the supervisor or manager in the affected person's chain of command, or to an agency HR official.

3. In instances where an affected person designates a representative in writing, the affected employee's personal representative or union representative may report these incidents on behalf of the affected person pursuant to the procedures contained in this order. Any bargaining unit employee may request union representation at any time during these procedures in accordance with existing laws and collective bargaining agreements.

4. Any supervisor or manager or agency HR official, as described inV.A.1,V.A.2, andV.A.3 above, who receives a report of alleged harassment or otherwise becomes aware of harassment[4], or an allegation of the same, shall immediately refer the matter to the alleged harasser's first-line supervisor. If the alleged harasser's first-line supervisor is named in the allegations, the matter should be referred to a higher-level supervisor in the alleged harasser's chain of command or an agency HR official.

5. If an affected person informs a supervisor, manager or an agency HR official about alleged harassment, but asks him or her to keep the matter confidential and takes no action, the individual receiving the allegation must inform the affected person of the supervisor's, manager's or agency HR official's obligation to report the allegations to the affected person's chain of command who will take steps described in IV.B. below, consistent with this order.

6. If the allegation involves an affected person or an alleged harasser who is not an agency employee, the individual receiving the allegation shall promptly contact an agency HR official or agency legal counsel to determine the appropriate course of action, including how the appropriate employer will be notified.

B. <u>Immediate Response</u>

Any agency official (supervisor, manager, or agency HR official) who becomes aware of, or is notified of, an allegation(s) of harassment, must immediately take the following actions:

1. Coordinate with the agency HR official(s), agency legal counsel, as necessary, and an appropriate supervisor or manager in the alleged harasser's chain of command. Generally, the appropriate supervisor or manager will be the alleged harasser's first-line supervisor, unless s/he is named in the allegations. If the alleged harasser's first-line supervisor is named

[4] EPA supervisors and managers are required to address or correct harassment regardless of whether an affected person files a complaint.

in the allegations, the matter should be referred to a higher-level supervisor in the alleged harasser's chain of command.

2. The supervisor or manager identified above, in coordination with agency HR official(s) and legal counsel, will promptly determine the appropriate decision-maker and fact-finder (who should not be the same person), if any, regarding the allegations. Information necessary to identify a decision maker may include the identity of the alleged harasser as well as others that may have been aware of the allegations and chose not to take action. In determining the appropriate fact-finder, management will also consider concerns or preferences expressed by the affected person (e.g. gender of the fact-finder or perceived biases regarding the designated fact-finder). Additionally management will consider a request by the affected person for designation of a fact-finder from outside his/her chain-of-command or from outside the agency. In instances when an affected person makes such a request in writing, management will provide a written response to the affected person regarding his/her request. The affected person should be informed of the availability of the Employee Assistance Program.

3. The decision-maker, in consultation with agency legal counsel and an agency HR official, shall promptly assess the situation to determine the nature of the allegation and to identify what action(s), if any, should be immediately taken. The affected person should not be involuntarily transferred to another position pending fact-finding and review of the harassment allegations, or otherwise treated adversely in response to his/her allegations of harassment. Similarly, if the initial assessment does not indicate at least some basis to support the allegations of harassment, actions such as those listed below or any other action that would adversely impact the alleged harasser, should not be taken pending completion of the fact-finding.

   a. Immediate action will include:

      (1) Inform the alleged harasser that an allegation has been made, describe the nature of the allegation, and explain that the conduct, if true, must immediately cease.

      (2) Inform the alleged harasser of the prohibition against retaliation against any person for raising allegations of harassment, or participating in a fact-finding regarding such allegations.

      (3) Instruct the affected person and alleged harasser to refrain from initiating work-related contact with each other (in person, via email, or by telephone) pending the outcome of the fact-finding. In order to recognize that not all situations require an absolute prohibition on communications, allow managerial discretion to tailor an appropriate response to the situation at hand, and to avoid the potentially negative impact that the prior wording could possibly have. The scope and parameters of this limitation should be determined based on the severity of the allegations raised, and in consultation with agency legal counsel and the agency HR official.

      (4) Advise all persons involved that the confidentiality of harassment allegations and the identity of all involved, particularly the affected person(s) and alleged harasser(s), will be protected to the extent possible, and will only be revealed to persons with a need to know.

(5) Inform the affected person and the alleged harasser that the agency is obligated to conduct appropriate fact-finding, including preparation of a fact-finding report (if appropriate), regardless of the manner in which the allegations came to management's attention and regardless of the affected person's desire that the allegations remain confidential or not be reported.

NOTE: All supervisors, managers, and agency HR officials must report threats of violence, actual assaults, or any acts of violence immediately to agency security officials, local law enforcement, and the OIG.

b. Immediate action also may include:

(1) Making work scheduling changes so as to avoid contact between the affected person and alleged harasser.

(2) Temporarily transferring the alleged harasser.

(3) When circumstances do not permit the physical separation of the alleged harasser and the affected person, pending the outcome of the fact-finding, the alleged harasser may be placed on administrative leave. When utilizing this option, managers should ensure the amount of time an employee is placed on non-disciplinary leave with pay is minimized to the extent possible and appropriate.

(4) Where the alleged harassment involves conduct that may be criminal in nature (e.g., assault or battery), the matter should be immediately referred to an appropriate law enforcement entity including FPS and to the OIG. In situations where a law enforcement agency or the OIG initiates an investigation, any fact-finding conducted under this order should only be conducted when coordinated with and authorized by the law enforcement agency or the OIG. In cases involving the OIG, the decision-maker, in consultation with agency legal counsel and an agency HR official, should coordinate with the OIG on other steps that may be taken to prevent further harassment to the affected person pending an OIG review or investigation into the allegations.

C. Fact-finding

Generally, the fact-finder will complete the fact-finding and, if appropriate, deliver a fact-finding report that has been reviewed by agency legal counsel and an agency HR official to the decision-maker, within 15 business days of his or her designation. The time period for completing the fact-finding and report may be extended by the decision-maker under certain circumstances (e.g., unavailability of witnesses).

1. Prior to conducting any fact-finding, the fact-finder should develop a basic plan in coordination with agency legal counsel and an agency HR official regarding information to be gathered in the inquiry. The fact-finder should consult with agency legal counsel and an agency HR official as necessary throughout the fact-finding. The fact-finder should refer to

Appendix A, which contains sample interview questions that should be tailored to the particular allegation(s) at issue.

2. Fact-finding will usually include, at a minimum, interviews with:

   a. The affected person(s);

   b. The alleged harasser(s);

   c. Any witnesses to the alleged harassment, and

   d. Any other person who could reasonably be expected to have relevant information that could corroborate or refute allegations, (e.g., the person did not witness the harassment but spoke to the affected person immediately after the alleged event and could provide useful information).

3. The fact-finder must remind the affected person, alleged harasser, and any other persons interviewed about the agency's prohibition against retaliation. Additionally, the fact-finder must advise any interviewee, prior to the start of the interview, that he or she will be required to certify the accuracy of his/her written statement, or of the interview summary prepared by the fact-finder, in accordance with Appendix C.

4. The fact-finder must complete summaries of any interviews conducted and obtain signatures from interviewed persons attesting to their accuracy, or obtain signed statements, affidavits, declarations, or transcribed interviews, under oath, as appropriate. If an interviewed person refuses to attest to the accuracy of the information he or she provides to the fact-finder that is reflected in an interview summary or other document prepared by the fact-finder, the fact-finder may still include such document in the fact-finding report for consideration by the decision-maker. In such situations, the fact-finder must ask the interviewed person to explain his/her refusal for attesting to the accuracy of the document, and include such explanation in the fact-finding report.

   NOTE: Generally, an affected person or an interviewee will not be provided a copy of the fact-finding report, or other materials generated or obtained in the course of the fact-finding, with the exception of a copy of the written statement he or she provides, or the summary of his or her interview prepared by the fact-finder.

5. The fact-finding shall be confined solely to the reported allegation(s) of harassment. If additional unrelated allegations of harassment are made, or evidence of additional harassment comes to light during the fact-finding, the fact-finder shall immediately alert the decision-maker for a determination (in consultation with agency legal counsel and an agency HR official) regarding whether the scope of the fact-finding should be expanded, or a new and separate fact-finding should occur.

6. In accordance with the applicable laws and regulations, all agency employees, including supervisors and managers, are required to cooperate in fact-findings regarding allegations of harassment. The fact-finder shall consult with agency legal counsel and an agency HR official regarding any refusal to cooperate in the fact-finding inquiry. Employees who are

f. Disciplinary action[5].

NOTE: In the event the alleged harasser is not an EPA employee, coordinate corrective action with the appropriate employer; such action may include termination of the alleged harasser's access to EPA facilities and equipment.

3. If the decision-maker concludes that harassment has occurred, and takes corrective action, he or she shall notify the affected person that corrective action has been taken (without revealing either that any disciplinary action against the alleged harasser has occurred, or any other specific information that would violate the privacy rights of the alleged harasser), and encourage the affected person to immediately report any further harassment or retaliation.

4. If the decision-maker concludes that harassment has not occurred, the decision-maker will inform the affected person and alleged harasser that the harassment allegations were not supported by the information collected during the fact-finding.

5. Regardless of the conclusion, the decision-maker will inform the affected person and the alleged harasser of the prohibition against retaliation against anyone who reported allegations of harassment, and/or participated in the fact-finding.

6. The decision-maker shall make a record of conclusions reached and action(s) taken, if any. Records and evidence gathered during the fact-finding will be treated as confidential agency records and maintained in accordance with the applicable record retention laws, regulations and policies, including the Privacy Act.

7. The decision maker will provide the union with the same information (described in paragraphs 3 and 4 above) provided to affected persons and alleged harassers who are members of the bargaining unit.

VI. PROTECTION AGAINST RETALIATION.

Retaliation against any person who reports harassment, or who participates in a fact-finding, is prohibited and may result in disciplinary action, including dismissal.

VII. REVIEW DATE.

This order will be reviewed three (3) years from the date of approval to ensure that it is meeting its stated purpose. "Failure to conduct such review within the specified period will not void the requirements and procedures contained in the order."

VIII. TRAINING.

5 Any disciplinary action will be taken in accordance with the applicable regulations, Agency orders, and collective bargaining agreements. The decision-maker should consult with an Agency HR official and Agency legal counsel on any disciplinary action to be taken.

All managers and supervisors are required to complete training on these procedures. EPA will also ensure training is available for all employees.

IX. REFERENCES.

A. Administrator's Anti-Harassment Policy Statement

B. 29 C.F.R. Part 1614, Federal Sector Equal Employment Opportunity

C. 5 C.F.R. Part 752, Adverse Actions

D. EEOC's Enforcement Guidance: "Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors" (June 18, 1999), available at: http://www.eeoc.gov/policy/docs/harassment.html

E. EPA Order 1000.31A4, Discrimination on the Basis of Sexual Orientation, Gender Identity, Status as a Parent, Marital Status, or Political Affiliation

F. EPA Order 3110.6B, Adverse Actions

G. EPA Order 3110.8A2, EPA Administrative Grievance System

H. EPA Order 3120.1, Conduct and Discipline

I. EPA Order 3120.2, Conduct and Discipline Senior Executive Service

J. Applicable Collective Bargaining Agreements

APPENDIX A
Fact Finder's Interviewing Guidance

Questions to Ask Potential Parties and Witnesses

When detailed fact-finding is necessary, the fact-finder should interview the affected person, the alleged harasser, and third parties who could reasonably be expected to have any relevant information that may corroborate and/or refute the allegations or may have witnessed any incident in question. Information relating to the personal lives of persons being interviewed is generally relevant only in unusual circumstances. When conducting fact-finding interviews, the fact-finder should refrain from offering his or her opinion.

The following are examples of questions that may be appropriate to ask persons being interviewed. Any actual fact-finding should be tailored to the particular facts and may rely upon information and documents gathered in the course of the fact-finding, and altering or deviating from these sample questions shall not constitute a defect in any inquiry.

Questions to Ask the Affected Person

Who committed the alleged harassment?

What exactly occurred or was said?

When did it occur and is it still ongoing?

Where did it occur? How often did it occur?

How did it affect you?

How did you react?

What response, if any, did you make when the incident(s) occurred or afterwards?

Are there any other persons who have relevant information?

Was anyone present (or heard) when the alleged harassment occurred?

Did you tell anyone about it?

Did anyone see you immediately after the alleged harassment?

What is your relationship to alleged harasser?

Did the person who you believe harassed you harass anyone else at that time?

Do you know whether anyone else complained about harassment by that person?

Are there any notes, physical evidence, or other documentation regarding the incident(s)?

Do you fear retaliation or retribution for participating in this inquiry?

Do you know of any other relevant information?

Questions to Ask the Alleged Harasser
(Generally, you do not need to show the alleged harasser a copy of notes or summary information obtained from the affected person; the allegations may instead be described)

What is your relationship to the alleged affected person?

What is your response to the allegations?

If you disagree with the facts related, provide us your recollection of the "who, what, when, where, and how" for the alleged event(s).

Are there any persons who have relevant information?

Are there witnesses to the alleged incident?

Are there any notes, physical evidence, or other documentation regarding the incident(s)?

Do you know of any other relevant information?

Questions to Ask Potential or Actual Witnesses to the Alleged Harassment

What did you see or hear?

When did this occur?

Describe the alleged harasser's behavior toward the affected person and toward others in the workplace.

What did the affected person tell you?

When did she/he tell you this?

Do you know of any other relevant information?

Are there other persons who have relevant information?

APPENDIX B
Decision-Maker's Credibility Determination Guidance

Credibility Determinations

If there are conflicting versions of relevant events, the decision-maker will have to weigh each party's credibility. Credibility assessments can be critical in determining whether the alleged harassment in fact occurred. Factors to consider include:

Inherent plausibility
Is the information believable on its face?

Does it make sense in light of known information?

Did the individual have an opportunity to observe the event or act?

Inconsistency/Veracity
Did the person contradict him or herself?

Did s/he deny something that you know to be true from other sources of information?

Motive to falsify
Did the person have a reason to lie?

Corroboration/Contradiction
Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents or people who discussed the incidents with him or her at around the time that they occurred) or physical evidence (such as written documentation) that corroborates or contradicts a person's statement?

Are there inconsistencies in witness' prior statements?

Past record
Did the alleged harasser have a history of similar behavior in the past? (The fact that the alleged harasser engaged in similar behavior in the past does not necessarily mean that he or she did so again.)

None of the above factors are necessarily determinative as to credibility. For example, if there are no eyewitnesses to the alleged harassment, the complainant's credibility is not automatically defeated, since harassment often occurs behind closed doors.

APPENDIX C
Notice for Employees Being Interviewed

This is an official administrative inquiry regarding information pertaining to allegations of harassment, as defined in EPA Order 4711. The purpose of this interview is to obtain information that will assist in the determination of whether the alleged harassment occurred.

EPA Order 4711 requires that the confidentiality of harassment allegations and the identity of the affected person and alleged harasser will be protected to the extent possible, and will only be revealed to persons with a need to know. In accordance with EPA Order 4711, you must not discuss this interview with anyone, other than your personal or union representative, if any, your spouse, partner or other family members, with any Agency management, human resources, or other agency official involved in this fact-finding, or with any other person you choose to communicate with regarding this matter in the exercise of a right provided by law.

Any bargaining unit employee may request union representation at any time during these procedures in accordance with existing laws and collective bargaining agreements.

In addition, this notice is consistent with and does not supersede, conflict with, or otherwise alter your obligations, rights, or liabilities created by exiting statute or executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblowing protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling executive orders and statutory provisions are incorporated into this notice and are controlling.

You are going to be asked a number of questions regarding the alleged harassment. You have a duty to cooperate with this inquiry, and to respond fully and accurately to such questions. Should you refuse to cooperate with this fact-finding, or knowingly submit false information, you may be subject to disciplinary action.

The information you provide may be made available to other persons with a need to know, in accordance with the applicable laws and regulations. Retaliation against any person who reports harassment, or who participates in a fact-finding, may result in disciplinary action, including removal.

ACKNOWLEDGEMENT

I have read and understand my obligations as set forth above.

_____ _____

Date Signature

Date of Interview	
Location of Interview	
Name of Interviewee	

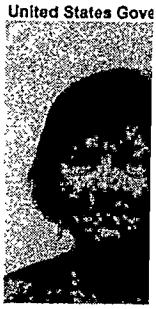
[SUMMARY OF INTERVIEW]

I hereby certify that the above statement is true and accurate, to the best of my knowledge, information, and belief.

_____ _____

Date Signature

United States Gove



O'MARA,
KATHRYN,