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SPECIAL COUNSEL ANNOUNCES THAT DEPARTMENT OF ENERGY VIOLATED WHISTLEBLOWER'S DUE PROCESS RIGHTS BY SUSPENDING HIM FOR 13 MONTHS

FOR IMMEDIATE RELEASE

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WASHINGTON, DC/August 11, 2011 – U.S. Department of Energy (DOE) Secretary Steven Chu has agreed to change his agency's internal policies and regulations in response to an Office of Special Counsel investigative report finding DOE committed prohibited personnel practices against Stephen Patrick, a nuclear materials courier and a federal agent at DOE's Oak Ridge, Tennessee, facility. Mr. Patrick was twice suspended when his managers revoked his certification to work with nuclear materials under the Department's Human Reliability Program (HRP).

Mr. Patrick's troubles began when he misused a government vehicle for which he received a mandatory 30-day suspension. Citing this misconduct, Mr. Patrick's supervisor also temporarily suspended his HRP certification, pending a review to determine his fitness to maintain the certification. Mr. Patrick appealed his suspension to the U.S. Merit Systems Protection Board (MSPB). Several months thereafter, his supervisors completed the fitness review and revoked his HRP certification to guard nuclear materials. Under DOE policy, the revocation of HRP certification resulted in a mandatory indefinite suspension. Mr. Patrick's suspension lasted for 13 months, during which time he pursued an internal administrative appeal to reinstate his certification. The DOE Deputy Secretary decided that Mr. Patrick should be recertified. Nevertheless, subordinate DOE officials interpreted this to mean that Mr. Patrick should again go through the original certification process, which resulted in a second indefinite suspension. Mr. Patrick then filed an OSC complaint, alleging reprisal for his MSPB appeal, as well as reprisal for disclosures that he made to the Office of Inspector General following the initial revocation of his certification.

OSC obtained three orders from the MSPB that temporarily stayed his suspension to allow OSC to investigate the merits of his complaint. At the conclusion of its investigation, OSC reported to Secretary Chu that the agency's policy of indefinitely suspending Mr. Patrick violated due process. The report noted that, under DOE policy, Mr. Patrick had no opportunity to obtain

back pay after his managers' decisions had been overturned. OSC recommended to Secretary Chu that DOE cancel Mr. Patrick's suspensions, provide him with back pay and rescind its mandatory suspension policy.

On August 2, 2011, DOE informed OSC that while it disagreed with OSC's conclusion that it had violated Mr. Patrick's due process rights, it was rescinding its policy of mandatory indefinite suspensions when an HRP certification is revoked. Instead, DOE agents like Mr. Patrick will be placed on administrative leave pending the completion of their internal appeals. Furthermore, a DOE working group is drafting regulatory changes to expedite the internal appeals process to avoid lengthy delays, like the 13 months that passed between the revocation decision in Mr. Patrick's case and the resolution of his appeal.

Special Counsel Lerner stated, "My office will ensure that all federal employees are treated fairly and equitably. The Department of Energy's policy denied employees any meaningful opportunity to recover lost salaries even after they were vindicated. We are encouraged that DOE is bringing its policy into compliance with the requirements of due process, which will benefit all Department employees. I want to thank Secretary Chu and Under Secretary D'Agostino for their forthcoming response to our report. We look forward to DOE finalizing its efforts to remedy the problems identified by OSC."

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. For more information, please visit our website at www.osc.gov.