



OIG

OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Memorandum Report

EPA Regional Superfund Ombudsmen Program Needs Structure

Report No. 2003-S-00004

March 13, 2003



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

March 13, 2003

MEMORANDUM

SUBJECT: Memorandum Report:
EPA Regional Superfund Ombudsmen Program Needs Structure
Report No. 2003-S-00004

FROM: Lisa White /s/ Lisa White
Project Manager

TO: Marianne Lamont Horinko (5101T)
Assistant Administrator
Office of Solid Waste and Emergency Response

This is our final report on the subject review conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This memorandum report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This memorandum report represents the opinion of the OIG and the findings contained in this report do not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established resolution procedures.

Results in Brief

EPA does not have a management system in place to ensure its Regional Superfund Ombudsmen are accountable for fulfilling their responsibilities. The Regional Superfund Ombudsman function is generally a collateral duty within the Superfund program. As a result, there is a perceived lack of independence and impartiality for EPA's Regional Superfund Ombudsmen. Further, a lack of guidance has caused uncertainty over the Regional Superfund Ombudsman function. Changing the title of the Regional Superfund Ombudsmen would allow them to continue to provide a valuable service by informally resolving issues at a local level, but will alleviate the perception that Regional Ombudsmen should meet the American Bar Association's core characteristics of impartiality and independence. In addition, to ensure consistent performance and results, your office needs to provide guidance describing the roles and responsibilities of the position.

Purpose of Review

When the National Ombudsman function was transferred to the OIG, we committed to review the Regional Superfund Ombudsmen Program. We designed our review to answer the following questions:

- What are the roles and responsibilities of the Regional Superfund Ombudsmen subsequent to the OIG assuming the function of the National Ombudsman's Office?
- Is there a management system in place to ensure the Regional Superfund Ombudsmen are accountable for fulfilling their responsibilities?

Background

As a part of the Resource Conservation and Recovery Act (RCRA) 1984 amendments, Congress established a National Ombudsman position so that the public would have someone to come to with questions and concerns about the RCRA program. When the statutory authority expired in 1989, EPA retained the function and, in 1991, expanded the National Ombudsman scope to include the Superfund program. In 1995, a Regional Ombudsman position was created in each EPA Regional Office as part of the Superfund Administrative Reforms effort. This was done to facilitate resolution of stakeholder concerns, and to provide a forum so states and communities could be more informed and involved in cleanup decisions. EPA appointed the 10 Regional Superfund Ombudsmen in June 1996.

Generally, the Regional Superfund Ombudsmen are not the first point of contact for the stakeholders. Rather, if the stakeholder is unable to get concerns addressed by the Regional site team, then the Regional Superfund Ombudsmen will try to help resolve the issues. While the Regional Superfund Ombudsmen are the Agency officials designated to receive inquiries and complaints about the administration of a program, the Ombudsman does not have authority to change decisions made by EPA. The Regional Superfund Ombudsmen were not intended to be advocates for a community, person, or institution. Rather, their role is to listen to all sides in an impartial, objective manner, and to provide assistance in trying to understand and resolve the problem. If necessary, they can recommend possible solutions to Agency managers. The Regional Superfund Ombudsmen may conduct informal fact finding, and may help to mediate disputes.

Scope and Methodology

We conducted this review from October 8, 2002, through November 30, 2002, in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. The review did not extend beyond the preliminary research phase. We conducted an exit conference with EPA officials on March 5, 2003. Agency comments and our evaluation of those comments are summarized after the recommendations, and a copy of the Agency response is provided in Appendix A.

To accomplish our objectives, we sent questionnaires to the 10 Regional Superfund Ombudsmen, and conducted followup interviews with 5 of the 10. Moreover, we conducted interviews with the EPA Headquarters Small Business and Asbestos Ombudsman and the Ombudsman for the Registration Division in the Office of Pesticides. We reviewed all EPA correspondence relating to the Ombudsman Program, including: EPA's 1987 Hazardous Waste Ombudsman Handbook; the Office of Solid Waste and Emergency Response 1998 memorandum attempting to clarify the roles and responsibilities of the National and Regional Ombudsmen; EPA's October 5, 2000, Draft Guidance for the National Hazardous Waste and Superfund Ombudsman and Regional Superfund; and the draft operating standards and guidelines for the Multi-Regional Superfund Ombudsman Pilot Project. We did not interview stakeholders or review the Regional Superfund Ombudsmen case files. We also reviewed the following two General Accounting Office (GAO) reports:

- *EPA's National and Regional Ombudsmen Do Not Have Sufficient Independence*, Report No. GAO-01-813, July 27, 2001.
- *Issues Raised by the Reorganization of EPA's Ombudsman Function*, Report No. GAO-03-92, October 31, 2002.

EPA Does Not Have an Effective Management System for the Regional Superfund Ombudsmen Program

Ombudsmen Impartiality Considered Essential

The American Bar Association identifies one of the core characteristics of an Ombudsman as having the ability to conduct inquiries and investigations in an impartial manner, free from initial bias and conflict of interest. Another core characteristic is being independent, free from interference in the performance of duties and independent from control, limitation, or penalty by an official who may be the subject of a complaint or inquiry. However, two GAO reports (dated July 2001 and October 2002) noted concerns about the independence and impartiality of both EPA's National Ombudsman and its Regional Superfund Ombudsmen.

Impartiality is essential to the effectiveness of the Office of Ombudsman. It is important to emphasize that the Ombudsman will not be an **advocate** for the Agency or the public.

Hazardous Waste Ombudsman Handbook,
September 1987

OIG Given National Ombudsman Authority to Ensure Impartiality

The former National Ombudsman's office personnel lacked impartiality when performing their duties. According to EPA's Hazardous Waste Handbook, the Ombudsman must remember that he or she is part of EPA's mission and, thus, must work within EPA's system to address problems, rather than standing apart and criticizing the Agency. The former EPA National Ombudsman's inability to meet the American Bar Association's characteristics for impartiality and independence were addressed in the July 2001 GAO report. Examples of alleged lack of impartiality and unprofessional behavior are

detailed in a December 14, 2000, memorandum from the then Assistant Administrator of EPA’s Office of Solid Waste and Emergency Response to an EPA official assigned to the former National Ombudsman’s office. The memorandum stated the official’s actions have been “inappropriate, unprofessional, and lacking in impartiality.” Examples are as follows:

Date of Hearing	Concern Expressed
January 25, 1999	The former Ombudsman official asked at least three different hearing participants the same question: “Do you believe there was and/or is evidence of a cover-up related to the Industrial Landfill Facility activities?” The memorandum stated that questions of this kind – aimed at inciting public angst rather than objective fact finding – further reflects lack of impartiality in the performance of Ombudsman-related duties.
June 5, 2000	The former Ombudsman official read two EPA employees their Miranda rights and informed them that whatever they said could be used against them in a court. The memorandum stated this action was clearly outside the scope of the EPA Ombudsman official’s authority because his job title is Program Analyst and he is not a law enforcement official.
August 19, 2000	The former Ombudsman official described the public as having been “used as pawns” and he thought EPA was “raping” the people of the valley.

In response to GAO’s recommendations, the National Ombudsman function was moved from EPA’s Office of Solid Waste and Emergency Response to the EPA OIG, to correct the independence and impartiality issues raised.

Lack of Impartiality Still Exists at Regional Superfund Ombudsman Level

While EPA has responded to GAO’s concerns regarding the lack of independence and impartiality of its National Ombudsman, EPA has not yet addressed GAO’s concerns about the independence and impartiality of the Regional Superfund Ombudsmen.

The continued alignment of the Regional Superfund Ombudsmen with the Superfund program indicates a lack of independence and impartiality. Some of the Regional Superfund Ombudsmen are in management positions and supervise members of the Regional Superfund site team, and these teams make decisions that are often the cause of stakeholder complaints. Specifically, 7 of the 10 Regional Superfund Ombudsmen are located in the Superfund program and receive their annual evaluations from managers within that program. In 5 of the 7 regions aligned with the Superfund program, the Regional Ombudsmen duties are collateral duties, with the estimated time spent on Regional Ombudsmen duties ranging from 5 to 20 percent.¹ The remaining time is spent working in the Superfund program. None

¹Although Region 2 does not have a single, full-time Ombudsman, due to the World Trade Center and Anthrax incidents, they have four individuals who help with this function.

of the Regional Superfund Ombudsmen with collateral duties maintain time records specific to their Ombudsmen duties. In effect, many of the Regional Superfund Ombudsmen perform their Ombudsmen duties in conjunction with other Superfund program responsibilities. We believe it would be unreasonable to expect the Regional Superfund Ombudsmen to be independent and impartial while working with or for others who make decisions that may become the subject of a complaint.

In response to the recommendations in the July 2001 GAO report, Regions 4 and 6 developed a proposal to pilot a *Multi-Regional Superfund Ombudsman Pilot Project*. These are the only two regions with full-time Ombudsmen. During the pilot project, each Regional Superfund Ombudsmen will carry out his or her duties on a full-time basis and follow operating standards and guidelines prepared by the pilot team. Unlike those performing Ombudsmen duties on a collateral basis, the full-time Regional Ombudsmen are proactive, in that they make themselves more accessible to stakeholders from the beginning of the overall decision-making process. These Regional Superfund Ombudsmen work with program officials to anticipate situations where early intervention of an Ombudsman could prevent major problems from developing. Conversely, we found the Regional Superfund Ombudsmen with collateral duties generally are reactive, getting involved after the site decisions have been made. These Regional Ombudsmen usually spend their time answering stakeholder requests for information.

Because the majority of the Regional Superfund Ombudsmen devote less than 20 percent of their time to the function, and because they are currently aligned with the Superfund program, it is not practical for EPA to meet the independence and impartiality standards required of an Ombudsman. Nonetheless, these Regional Superfund Ombudsmen believe they are effective in resolving stakeholder complaints at a local level, and think they can assist in alleviating site disputes. We agree there are many benefits to having a Regional EPA official, outside the site team, designated to receive inquiries and complaints from stakeholders and work to informally resolve the issues at the local level. For example, the Regional Superfund Ombudsmen:

- Are located closer to the people affected by the EPA action.
- Possess a strong background in Superfund.
- Have credibility with EPA program officials.
- Can identify and resolve stakeholder concerns before issues escalate.

To alleviate the perceived lack of independence and impartiality and better reflect their role within the organization, we believe the Regional Superfund Ombudsmen's title should be changed to more accurately describe their role.

Lack of Guidance Causes Uncertainty Over Regional Function

In 1987, EPA issued guidance that indicated there would be an Ombudsman Program in each Region, but left the responsibility for accomplishing this with the Regional Administrator. In 1996, about 9 years after the guidance was issued, EPA established the Regional Superfund Ombudsmen. As shown below, EPA has begun twice since 1996 to define the Ombudsman position, but never finalized the roles and responsibilities of the position.

Guidance	Action
Office of Solid Waste and Emergency Response memorandum attempting to clarify roles and responsibilities, February 1998.	Memorandum not implemented.
Draft Guidance for the National Hazardous Waste and Superfund Ombudsman and Regional Superfund Ombudsmen Programs, October 5, 2000.	Guidance not finalized and adopted.

The National Ombudsman function was moved to the OIG in April 2002. On June 19, 2002, the Deputy Inspector General and Deputy Assistant Administrator, Office of Solid Waste and Emergency Response issued a memorandum to the Regional Administrators. This memorandum informed the Regional Administrators that the Regional Ombudsmen will continue to deal with local public information inquiries and issues about the Agency Superfund program. However, any correspondence that constitutes a complaint or allegation about an Agency program or operation should be coordinated with the OIG to determine the appropriate office to resolve it.

The Regional Superfund Ombudsmen defined their duties to include the following:

- Conducting informal fact finding.
- Responding to information requests.
- Making recommendations to Agency managers.

One Regional Superfund Ombudsman told us that the majority of the complaints he receives are when stakeholders believe EPA is ignoring them or their property was damaged as a result of a Superfund cleanup. For example, a homeowner contacted the Regional Ombudsman concerning unresolved property damages to a fence, sidewalk, and air conditioner, and the Regional Ombudsman recommended compensation to the homeowner. Another Regional Ombudsman told us that most calls are no more than requests for program information or for a referral to the appropriate agency and office.

All of the Regional Superfund Ombudsmen interviewed indicated there have been no changes to their work subsequent to the OIG assuming the functions of the former National Ombudsman office. They believe no changes are required and indicated they will continue their work while coordinating with the OIG. We agree that these officials should continue to focus on the program operating responsibilities, such as informally resolving problems between the Agency and stakeholders and addressing information requests about the Superfund program.

One of the key elements in the June 19, 2002 memorandum was coordination between the Regional Superfund Ombudsmen and the OIG. The Regional Superfund Ombudsmen, the OIG, and officials from EPA's Office of Solid Waste and Emergency Response currently participate in monthly conference calls to discuss and coordinate cases. According to the Regional Superfund Ombudsmen, this coordination has been effective, in contrast to their past relationship with the former National Ombudsman, who rarely interacted with them. According to EPA officials, the former National Ombudsman did not participate in monthly conference calls or return e-mails or telephone calls. Also, he did not usually notify or coordinate with the Regional Superfund Ombudsmen when visiting a Superfund site in their Region.

Many of the Regional Superfund Ombudsmen agree clear, consistent national guidance defining their roles and responsibilities is needed. Without such guidance, questions and concerns about their role will continue.

Recommendations

We recommend the Assistant Administrator for the Office of Solid Waste and Emergency Response:

1. Change the title of the Regional Superfund Ombudsmen to better reflect their role within the organization.
2. Develop clear, consistent national guidance describing the roles and responsibilities of this employee/position.

Agency Response and OIG Evaluation

The Office of Solid Waste and Emergency Response concurred with our recommendations and indicated they will immediately begin work on developing specific milestones to implement the recommendations. They will coordinate their efforts with the National Ombudsman.

The OIG accepts the Agency's response, and made changes to the final report to reflect comments related to the number of Ombudsmen not aligned with the Superfund program and the Region 2 Ombudsman. In response to the final report, the Office of Solid Waste and Emergency Response should submit a corrective action plan, including milestone dates for completion of action it plans to take regarding both recommendations.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days of the date of this report. You should include a corrective action plan for agreed upon actions, including milestone dates. We have no objection to the further release of this report to the public. For your convenience, this report will be available at <http://www.epa.gov/oigearth/erom.htm>.

If you or your staff have any questions regarding this report, please contact me or Tiffine Johnson-Davis at (215) 814-5800.

Appendix A

Agency Response

March 10, 2003

MEMORANDUM

SUBJECT: OSWER Response to OIG Draft Memorandum Report “EPA Regional Superfund Ombudsmen Program Needs Structure” Assignment No. 2003-000011

FROM: Marianne Lamont Horinko /s/
Assistant Administrator

TO: Lisa White, Project Manager
Office of the Inspector General

We have reviewed the subject draft memorandum report, and we concur with the recommendations in the report. We will immediately begin work on developing specific milestones to implement Recommendations 1 and 2. We will coordinate our efforts with the National Ombudsman.

On page 4 of the report, it states that eight of the ten Regional Superfund Ombudsmen are located in the Superfund program. It should say seven of ten because in Regions 8, 9 and 10 the ombudsman is located outside the program. You may also want to clarify the statement on Page 5, that only Regions 4 and 6 have full-time ombudsmen. While Region 2 does not have a single, full-time ombudsman, they have four individuals who help with the function and collectively devote more than one FTE to this job.

We appreciate that the OIG has recognized the Regional Superfund Ombudsmen provide “a valuable service” and that “there are many benefits to having a Regional EPA official, outside the site team, designated to receive inquiries and complaints ... and to work to informally resolve the issues at the local level.” We also welcome ideas for improving their function.

Thank you for the opportunity to review this draft memorandum report. We believe the Regional Superfund Ombudsmen have provided and will continue to provide a valuable service in dealing with local public-information inquiries and proactively facilitating resolutions of issues and problems relating to the Superfund program and operations. We look forward to continued close coordination with the National Ombudsman in strengthening this important function.

cc: Mike Cook, OERR
Bruce Engelbert, OERR
Victoria Van Roden, OSRE
Superfund Regional Ombudsmen

Appendix B

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EPA Regional Administrators (Regions 1-10)

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