



March 5, 2001

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Re: Draft Guidance for National Hazardous Waste
Ombudsman and Regional Superfund Ombudsmen
Program

The Coalition for Responsible Waste Incineration (CRWI) is pleased to submit comments on the Draft Guidance for National Hazardous Waste Ombudsman and Regional Ombudsmen Program (66 FR 365, January 3, 2001). CRWI represents twenty companies with hazardous waste combustion interests. These companies account for a significant portion of the U.S. capacity for hazardous waste combustion. In addition, CRWI is advised by a number of academic members with research interests in hazardous waste combustion. As such, CRWI is a unique technical resource on combustion. CRWI seeks to help its member companies both to improve their combustion operations and to work constructively with lawmakers and regulators to develop effective and workable policies and rules that ensure protection of public health and the environment.

In general, CRWI supports the draft guidance document, as written. However, there are a number of general and specific points where we believe the guidance document can be improved.

General Comments:

1. Throughout the document, the point is correctly made that the Ombudsman must be impartial and an objective reviewer of the situation that he/she is investigating. In fact, Section XIV (Accountability of the Ombudsman) makes it clear that the Ombudsmen and their staff are expected to act in a professional, objective, and



impartial manner. However, the draft guidance is not clear what would happen if the Ombudsman does not act in this manner. What recourse does anyone have? Perhaps, the final guidelines should develop a procedure that can be brought to bear if any interested party believes that the Ombudsmen or their staff did not act in an appropriate manner.

2. Part of the role of the Ombudsman is to conduct investigations and make recommendations on possible solutions to Senior Agency managers. To be able to make sound judgements, the Ombudsman must have access to expertise in the areas being investigated. Without having experts, sound technical and rational recommendations are not possible. CRWI believes that EPA should provide sufficient resources for the Ombudsmen to conduct their investigations. This does not mean developing a large staff but it may mean developing a method of loaning appropriate personnel or contract support to that office for conducting specific investigations. The guidance should also address how experts are to be qualified.
3. CRWI believes that the Ombudsman should be as independent as possible. However, with this independence comes significant responsibility to act in a professional, objective, and impartial manner. Failure to maintain a professional, objective, and impartial manner should result in a significant curtailment of the independence of the Ombudsman.

Specific Comments

1. Matters in Litigation: It is CRWI's opinion that the Ombudsman should never investigate any issue in litigation. This includes all criminal and civil litigation. In the same manner, we support the concepts outlined in the Inspector General Investigative Issues section.
2. Public Meetings: CRWI believes that public meetings, if properly run, can be used by the Ombudsman to develop an understanding of the issue. CRWI believes that some method of recording the events of the meeting should be kept. This can range from personal notes for small, informal meetings to the use of a court reporter for larger, more complicated meetings. For certain investigations, it may be appropriate for the Ombudsman to set up a docket where all materials presented and used to develop recommendations can be view by the public. CRWI does not believe that the Ombudsman should need the Assistant



Administrator's or the Deputy Assistant Administrator's permission to conduct a public hearing, unless there is pending/potential litigation of the issue being investigated. However, the Ombudsman should be encouraged to coordinate any public hearings with the appropriate authorities to ensure that efforts are not being duplicated or conflict with other Agency actions.

3. Technical Support: CRWI believes that the Ombudsman should be required to ensure that experienced and properly trained technical or regulatory staff work on any investigation. Without knowledgeable staff, the Ombudsman will have difficulty defending their conclusions and recommendations as being technically sound.
4. After the Inquiry: In general, CRWI supports this section. However, one point should be made. While the draft guidance allows the Ombudsman to share the draft report with the party being criticized, it is not mandated. CRWI believes that the party being criticized has a right to review the draft report prior to release. This would allow the criticized party the ability to respond to any issues they believe are not fairly presented.
5. Review of Draft Reports: In general, CRWI supports this section. However, the draft guidance allows up to 30 days review time for a criticized party at the discretion of the Ombudsman. CRWI suggests that the final guidance require the Ombudsman to allow 30 days (no more, no less) for criticized parties to respond.

Thank you for the opportunity to comment on this draft guidance document. If there are any questions, please contact me at 202-775-9869 or at crwi@erols.com.

Sincerely yours,

Melvin E. Keener, Ph.D.
Executive Director

cc: Mike Shapiro
CRWI members