

Calendar No. 103

108TH CONGRESS }
1st Session }

SENATE

{ REPORT
108-50

OMBUDSMAN REAUTHORIZATION ACT OF 2003

—
MAY 21, 2003.—Ordered to be printed
—

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 515]

TOGETHER WITH

ADDITIONAL VIEWS

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 515) to provide additional authority to the Office of Ombudsman of the Environmental Protection Agency, having considered the same, reports favorably thereon and recommends that the bill do pass.

GENERAL STATEMENT AND BACKGROUND

The 1984 amendments to the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) first established a National Hazardous Waste Ombudsman at the Environmental Protection Agency (EPA) (42 U.S.C. 6917). Over time, EPA expanded the Office of the Ombudsman's jurisdiction to include Superfund and other hazardous waste programs managed by the Office of Solid Waste and Emergency Response (OSWER). EPA retained the Office of the Ombudsman within OSWER as a matter of policy after its legislative authorization expired in 1988. Additionally, EPA installed part-time ombudsmen in each of its regional offices.

The Office of the Ombudsman typically responds to citizen's concerns, assists industry in complying with environmental regulations, and handles complaints arising from the relevant hazardous

waste programs. In recent years, the Office has played an increasingly prominent role through its investigations of citizen complaints referred by Members of Congress.

Asked to examine whether there are institutional barriers to the fulfillment of the Office of the Ombudsman's responsibilities, the General Accounting Office (GAO) issued a report (GAO-01-813) titled "EPA's National and Regional Ombudsmen Do Not Have Sufficient Independence" in July 2001. The report found that key aspects of EPA's Office of the Ombudsman were not consistent with relevant professional standards. The report found that "EPA could help ensure that the ombudsman is perceived as independent by locating the function outside the unit he is responsible for investigating and by giving him control over his budget and staff resources." The report also found that the lack of independence of the regional ombudsmen should preclude their involvement in more significant investigations, and that EPA should reexamine these positions. Additionally, the report recommended that the Office of the Ombudsman (1) develop written criteria for selecting and prioritizing cases for investigations and (2) maintain records on its investigations and other activities sufficient to serve as the basis for a reasonable estimate of resource needs.

Partly in response to the GAO's recommendations, in the fall of 2001 (November 27), EPA announced the transfer of the Office of the National Ombudsman to the Office of the Inspector General. The transfer was challenged in Federal court by the then National Ombudsman, but the court dismissed the claim April 12, 2002, ruling that the National Ombudsman had not exhausted his potential administrative remedies. The transfer became effective on April 13, 2002, and the Office was physically relocated on April 19, 2002. Claiming that the move of the Office of the Ombudsman to the Office of the Inspector General (OIG) would compromise his independence, the National Ombudsman resigned April 22, 2002. The EPA appointed an Acting National Ombudsman on May 3, 2002.

OBJECTIVES OF THE LEGISLATION

S. 515 reauthorizes the Office of the Ombudsman and sets funding levels through fiscal year 2013. The legislation strengthens the Office of the Ombudsman by establishing an independent office within EPA whose head shall be appointed by the President and confirmed by the Senate. The Ombudsman must not have been an employee of the EPA 1 year prior to appointment and must have prior experience as an ombudsman in a Federal, State, or local government entity. The National Ombudsman reports directly to the Administrator of the EPA, but can only be removed by the President.

It is the intent of the legislation that the Office of the Ombudsman conform to the relevant professional standards for establishment and operation. One such guideline is the American Bar Association's 2001 Standards for the Establishment and Operation of Ombuds Offices. It is expected that the Office of the Ombudsman conform to either the ABA's standard or a similar standard that is at least as rigorous and widely accepted.

The Office of the Ombudsman is empowered to conduct investigations, make findings of fact, hold public hearings, and make non-binding recommendations to the EPA Administrator concerning

programs within the jurisdiction of the EPA's Office of Solid Waste and Emergency Response.

The Office of the Ombudsman is required to issue an annual report of its activities to the Congress and may issue additional reports, conclusions, and recommendations concerning other matters under investigation by the Office. It is the intent of this legislation that these reports include dissenting views either in whole, or where appropriate, in summarized form.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This Act may be cited as the "Ombudsman Reauthorization Act of 2003".

Sec. 2. Office of Ombudsman

This section amends the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) to restore the authorization for the Office of the Ombudsman originally established by Congress in 1984 (42 U.S.C. 6917) to receive complaints and render assistance to any person regarding hazardous waste programs at the Environmental Protection Agency (EPA). This section strengthens the Office of the Ombudsman by establishing an independent office within EPA, specifies the duties, powers and responsibilities of the Office, allows the Ombudsman to administer the Office through control of the budget and staff, provides employee whistleblower protection for any person who complies with this section, authorizes appropriations and establishes a separate line item in the budget for the Office. This section also allows the Ombudsman to make recommendations directly to the Administrator, while at the same time requiring the Ombudsman to report annually to Congress and the President, and providing conditions for removal of the Ombudsman.

SUBSECTION (A): DEFINITIONS

This subsection defines the term "Agency" as the EPA, the term "Deputy Ombudsman" as individuals appointed as such by the Ombudsman in each region of the Agency, the term "Office" as the Office of the Ombudsman, and the term "Ombudsman" as the director of the Office.

SUBSECTION (B): ESTABLISHMENT

This subsection establishes the Office as an independent office within EPA. The previous Ombudsman was established within the Office of Solid Waste and Emergency Response (OSWER), and reported to the Assistant Administrator of OSWER. The Ombudsman was placed within OSWER because he had responsibility for receiving complaints and rendering assistance on programs administered by that office. However, the Ombudsman was not truly independent because he was under the supervision of, and his budget and resources were controlled by, those who administered the programs he investigated. This subsection corrects this problem and establishes a truly independent Office of the Ombudsman at EPA, consistent with other Federal ombudsmen and relevant professional guidelines such as the American Bar Association and the United States Ombudsman Association. This subsection provides

that the Ombudsman shall be appointed by the President by and with the advice and consent of the Senate. Eligible appointees are individuals who have experience as an Ombudsman in a government entity, and who have not worked at EPA within 1 year of appointment. The Ombudsman serves a 5-year term and may be reappointed one additional term. The Ombudsman may be removed or suspended by the President for neglect of duty or malfeasance in office, and the reasons for removal or suspension must be communicated to Congress.

SUBSECTION (C): DUTIES

This subsection provides that the Ombudsman shall receive complaints, grievances or requests for information from any person relating to any program or requirement administered by OSWER, including but not limited to the Solid Waste Disposal Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The Ombudsman may render assistance, conduct investigations, make findings of fact, and make nonbinding recommendations to the EPA Administrator regarding these programs and requirements.

SUBSECTION (D): POWERS AND RESPONSIBILITIES

This subsection would codify and strengthen the powers of the Office of the Ombudsman in order to provide the greatest protection for the independence of the Office, and ensure that the Ombudsman may carry out his duties as intended by this section. EPA has currently placed the ombudsman function in the Inspector General's office. According to testimony before this committee on June 25, 2002, the Inspector General's office requires the Ombudsman to obtain prior approval by management to conduct a wide range of activities, such as determining matters appropriate for investigation, or communicating with the public, Congress and the media.

This subsection clarifies that the Ombudsman may communicate with any person, including Congress and the press. The Ombudsman may select and prioritize cases through the power to investigate any action, select appropriate matters for action, and determine the scope and manner of investigations made by the Office as long as the case falls under the programs or requirements outlined above in subsection (c).

The Ombudsman may also prescribe the methods by which complaints are made, received and addressed by the Office. The Ombudsman may determine how and when to distribute conclusions and recommendations on matters addressed by the Office (separate from the requirement that the Ombudsman issue an annual report as provided in a later subsection). The Ombudsman may request assistance from other Federal agencies and departments, examine records and inspect properties under the administrative jurisdiction of Federal agencies and departments involved in a matter under OSWER. The Ombudsman may conduct public hearings on the record in the course of an investigation, and may issue a subpoena to obtain information relevant to the investigation. In addition to conducting public hearings, the Ombudsman may also engage in alternate dispute resolution and informal processes to address citizen complaints. The Ombudsman shall administer a budget for the Office.

SUBSECTION (E): ADMINISTRATION

This subsection allows the Ombudsman to manage the Office through control of the budget and personnel resources, and places reporting requirements on the Office. The Ombudsman shall appoint a Deputy Ombudsman in each region of the Agency, and may hire and supervise other employees necessary to carry out the duties of the Office. It is the intent of the legislation that the Deputy Ombudsmen be full-time employees of the Office of the Ombudsman. The Ombudsman may delegate responsibilities to other employees of the Office except the power of delegation, the subpoena power, and the responsibility to make recommendations to the Administrator. The Ombudsman must maintain contact information different from the contact information of the Agency in each region to ensure that citizens may communicate unfettered with the Office of the Ombudsman. The Ombudsman is required to publish an annual report on the status of complaints and cases brought before the Ombudsman, and must submit the report to Congress, the President, and the Administrator. The Ombudsman may also issue reports and recommendations concerning individual matters addressed by the Office. The Ombudsman must solicit comments from the Agency, and must include these comments in any written report or recommendation issued by the Office.

SUBSECTION (F): PENALTIES

This subsection clarifies that the provisions of law relating to knowingly and willfully making false statements (18 U.S.C. 1001) and obstruction of justice (18 U.S.C. 1505) apply to activities performed by the Office of the Ombudsman.

SUBSECTION (G): EMPLOYEE PROTECTION

This subsection ensures that the duties, powers and responsibilities of the Office of the Ombudsman are protected activity under Federal environmental whistleblower statutes. This subsection provides that any employee may not be discharged or discriminated against (with respect to compensation, terms, conditions or privileges of employment) by their employer for complying with any provision of this section. Protected employees include employees of the Office of the Ombudsman and other government employees as well as non-government employees involved in a matter before the Office.

Any employee who believes that they have been discharged or discriminated against for complying with this section may, within 180 days following the violation, file a complaint with the Department of Labor (DOL) in accordance with the procedures established in the Energy Reorganization Act of 1974 (42 U.S.C. 5851). Many other Federal environmental statutes also have whistleblower provisions. However, the statute of limitations for filing a complaint tends to be 30 days, and is often too short a timeframe for the employee to become aware of the violation and file a complaint with DOL. The complaint procedure established in 42 U.S.C. 5851 is considered a more protective standard for whistleblower complaints. The case law has consistently held that no categories of employees are excluded, and the statute has been used effectively

in recent years by Federal and private employees, including those engaged in Ombudsman activities.

Under the DOL proceedings, upon receipt of the complaint, the Secretary of Labor must notify the person named in the complaint, and conduct an investigation of the alleged violation. The Secretary must complete the investigation, and notify both parties of the results of the investigation within 30 days of receiving the complaint. If the parties fail to enter settlement negotiations, the Secretary must issue an order providing relief or deny the complaint within 90 days of receiving the complaint. An order issued by the Secretary may be appealed in the United States court of appeals for the circuit in which the violation occurred. If a person fails to comply with an order, the Secretary may file a civil action in United States district court to enforce such order.

SUBSECTION (H): APPLICABILITY

This subsection provides that the establishment of this section may not limit any remedy or right of appeal. The Office of the Ombudsman may conduct activities as authorized in this section, including activities that relate to agency actions that under any provision of law, are final, not reviewable, or not subject to appeal. However, in so doing, the Office does not have any authority to change Administrative policy. The Office of the Ombudsman is established as an “informal” function to resolve complaints, through powers such as the authority to conduct investigations, conduct public hearings and publish reports and recommendations. Recommendations of the Ombudsman are not binding administrative action. Any person who contacts the Office is not limited from following other procedures concerning grievances, appeals or administrative matters under the Solid Waste Disposal Act or any other law, nor is the establishment of the Office intended to affect the formal administration of any law.

SUBSECTION (I): AUTHORIZATION OF APPROPRIATIONS

This subsection authorizes \$3 million, \$4 million, and \$5 million for fiscal years 2004–2005, 2006–2009, and 2010–2013 respectively, for the Office of the Ombudsman. Directs the President to include a separate line item for the Office in the annual budget request sent to Congress.

LEGISLATIVE HISTORY

S. 515 was introduced by Senator Crapo, on March 5, 2003, and referred to the Committee on Environment and Public Works. The committee considered and amended the bill in a business meeting on April 9, 2003, and ordered the bill favorably reported to the Senate. This bill is identical to S. 606 that was reported by the committee in 107th Congress and passed by the full Senate.

HEARINGS

While the committee held no hearings on S. 515 during the 108th Congress, on June 25, 2002, the committee did hold a hearing to conduct oversight of the EPA’s Inspector General Actions with respect to the Office of the Ombudsman and to evaluate S. 606, a bill to provide additional authority to the Office of the Ombudsman of

the EPA. The committee received testimony from Senator Wayne Allard; Representative Jerrold Nadler; EPA Inspector General Nikki L. Tinsley; David Wood, Director, Natural Resources and Environment, U.S. General Accounting Office; Danielle Brian, Executive Director, Project on Government Oversight, Washington, DC; the former EPA National Ombudsman Robert Martin; Katherine Zanetti, Facilitator of the Shoshone Natural Resources Coalition, Wallace, ID; and Susan Shortz, President of Halt Environmental Lead Pollution, Throop, PA. S. 606, as reported by the committee in the 107th Congress, is identical to S. 515 that is the subject of this report.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 515 on April 9, 2003. The committee voted favorably to report S. 515 by unanimous voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill.

The bill does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 515 would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 21, 2003.

Hon. JAMES M. INHOFE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 515, the Ombudsman Reauthorization Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN

*Ombudsman Reauthorization Act of 2003, As ordered reported by
the Senate Committee on Environment and Public Works on
April 9, 2003*

Summary

S. 515 would reauthorize the Office of the Ombudsman within the Environmental Protection Agency (EPA) and would authorize the appropriation of \$18 million over the 2004–2008 period to support that office as well as \$24 million over the 2009–2013 period. The Office of the Ombudsman has been maintained since its authorization expired in 1988 and was most recently transferred to EPA’s Office of the Inspector General.

Under S. 515, the new office would be an independent office within EPA and the director of the office (i.e., the Ombudsman) would be appointed by the President and confirmed by the Senate. The Ombudsman would have the authority to investigate citizen complaints about programs under EPA’s jurisdiction and would have control over the office’s budget and staff. CBO estimates that implementing this legislation would cost \$18 million over the 2004–2008 period, assuming appropriation of the specified amounts. Enacting the bill would not affect direct spending or revenues.

S. 515 contains no intergovernmental or private-sector mandates as defined in the

Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

Estimated Cost to the Federal Government

CBO estimates that implementing the bill would cost \$18 million over the 2004–2008 period, assuming appropriation of the amounts authorized for each year. For this estimate, we assume the bill will be enacted near the beginning of fiscal year 2004. The estimated outlays are based on historical patterns for similar activities. The estimated budgetary impact of S. 515 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION ¹						
EPA Ombudsman Spending Under Current Law						
Budget Authority ¹	1	0	0	0	0	0
Estimated Outlays	1	0	0	0	0	0
Office of the Ombudsman:						
Authorization Level	0	3	3	4	4	4
Estimated Outlays	0	3	3	4	4	4
EPA Ombudsman Spending Under S. 515						
Authorization Level	1	3	3	4	4	4
Estimated Outlays	1	3	3	4	4	4

¹ The 2003 level is the amount appropriated for that year for the Office of Ombudsman.

Intergovernmental and Private-Sector Impact

S. 515 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

Estimate Prepared By: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Gregory Waring; Impact on the Private Sector: Lauren Marks.

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF SENATOR INHOFE

On April 8, 2003, the day prior to the business meeting, I received letters from both the Administrator of the Environmental Protection Agency and the Acting Assistant Attorney General for Legislative Affairs. These letters noted Administration opposition to the bill. A number of concerns were raised and by both the Administrator and the Acting Assistant Attorney General as well a willingness to work with the Committee on this legislation. I appreciate the Administration's views and look forward to working with both the Administration and the authors of this bill to address the Administration's concerns prior to the bill reaching the President's desk.

Changes in Existing Law

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

SOLID WASTE DISPOSAL ACT

[As Amended Through P.L. 106–580, Dec. 29, 2000]

TITLE II—SOLID WASTE DISPOSAL**Subtitle A—General Provisions****SHORT TITLE AND TABLE OF CONTENTS**

SEC. 1001. This title (hereinafter in this title referred to as “this Act”), together with the following table of contents, may be cited as the “Solid Waste Disposal Act”:

Subtitle A—General Provisions

Sec. 1001. Short title and table of contents.

* * * * * *

*

【OFFICE OF OMBUDSMAN

【SEC. 2008. (a) ESTABLISHMENT; FUNCTIONS.—The Administrator shall establish an Office of Ombudsman, to be directed by an Ombudsman. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests for information submitted by any person with respect to any program or requirement under this Act.

【(b) AUTHORITY TO RENDER ASSISTANCE.—The Ombudsman shall render assistance with respect to the complaints, grievances, and requests submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Administrator.

【(c) EFFECT ON PROCEDURES FOR GRIEVANCES, APPEALS, OR ADMINISTRATIVE MATTERS.—The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this Act, any other provision of law, or any Federal regulation.

【(d) TERMINATION.—The Office of the Ombudsman shall cease to exist 4 years after the date of enactment of the Hazardous and Solid Waste Amendments of 1984.】

SEC. 2008. OFFICE OF OMBUDSMAN.

(a) DEFINITIONS.—In this section:

(1) AGENCY.—The term “Agency” means the Environmental Protection Agency.

(2) DEPUTY OMBUDSMAN.—The term “Deputy Ombudsman” means any individual appointed by the Ombudsman under subsection (e)(1)(A)(i).

(3) OFFICE.—The term “Office” means the Office of the Ombudsman established by subsection (b)(1).

(4) *OMBUDSMAN.*—The term “Ombudsman” means the director of the Office.

(b) *ESTABLISHMENT.*—

(1) *IN GENERAL.*—There is established within the Agency an office to be known as the “Office of the Ombudsman”.

(2) *OVERSIGHT.*—

(A) *IN GENERAL.*—The Office shall be an independent office within the Agency.

(B) *STRUCTURE.*—To the maximum extent practicable, the structure of the Office shall conform to relevant professional guidelines, standards, and practices.

(3) *HEAD OF OFFICE.*—

(A) *OMBUDSMAN.*—The Office shall be headed by an Ombudsman, who shall—

(i) be appointed by the President by and with the advice and consent of the Senate; and

(ii) report directly to the Administrator.

(B) *QUALIFICATIONS FOR AND RESTRICTIONS ON EMPLOYMENT.*—A person appointed as Ombudsman—

(i) shall have experience as an ombudsman in a Federal, State, or local government entity; and

(ii) shall not have been an employee of the Agency at any time during the 1-year period before the date of appointment.

(C) *TERM.*—The Ombudsman—

(i) shall serve for a term of 5 years; and

(ii) may be reappointed for not more than 1 additional term.

(D) *REMOVAL.*—

(i) *IN GENERAL.*—The President may remove or suspend the Ombudsman from office only for neglect of duty or malfeasance in office.

(ii) *COMMUNICATION TO CONGRESS.*—If the President removes or suspends the Ombudsman, the President shall communicate the reasons for the removal or suspension to Congress.

(c) *DUTIES.*—The Ombudsman shall—

(1) receive, and render assistance concerning, any complaint, grievance, or request for information submitted by any person relating to any program or requirement under—

(A) this Act;

(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); or

(C) any other program administered by the Office of Solid Waste and Emergency Response of the Agency; and

(2) conduct investigations, make findings of fact, and make nonbinding recommendations to the Administrator concerning the programs and requirements described in paragraph (1).

(d) *POWERS AND RESPONSIBILITIES.*—In carrying out this section, the Ombudsman—

(1) may investigate any action of the Agency without regard to the finality of the action;

(2) may select appropriate matters for action by the Office;

- (3) may—
- (A) *prescribe the methods by which complaints shall be made to, and received and addressed by, the Office;*
 - (B) *determine the scope and manner of investigations made by the Office; and*
 - (C) *determine the form, frequency, and distribution of conclusions and recommendations of the Office;*
- (4) *may request the Administrator to provide the Ombudsman notification, within a specified period of time, of any action taken on a recommendation of the Ombudsman;*
- (5) *may request, and shall be granted by any Federal agency or department, assistance and information that the Ombudsman determines to be necessary to carry out this section;*
- (6) *may examine any record of, and enter and inspect without notice any property under the administrative jurisdiction of—*
- (A) *the Agency; or*
 - (B) *any other Federal agency or department involved in a matter under the administrative jurisdiction of the Office of Solid Waste and Emergency Response of the Agency;*
- (7) may—
- (A) *issue a subpoena to compel any person to appear to give sworn testimony concerning, or to produce documentary or other evidence determined by the Ombudsman to be reasonable in scope and relevant to, an investigation by the Office; and*
 - (B) *seek enforcement of a subpoena issued under subparagraph (A) in a court of competent jurisdiction;*
- (8) *may carry out and participate in, and cooperate with any person or agency involved in, any conference, inquiry on the record, public hearing on the record, meeting, or study that, as determined by the Ombudsman—*
- (A) *is material to an investigation conducted by the Ombudsman; or*
 - (B) *may lead to an improvement in the performance of the functions of the Agency;*
- (9) *may administer oaths and hold hearings in connection with any matter under investigation by the Office;*
- (10) *may engage in alternative dispute resolution, mediation, or any other informal process that the Ombudsman determines to be appropriate to carry out this section;*
- (11) *may communicate with any person, including Members of Congress, the press, and any person that submits a complaint, grievance, or request for information under subsection (c)(1); and*
- (12) *shall administer a budget for the Office.*
- (e) ADMINISTRATION.—
- (1) IN GENERAL.—*The Ombudsman shall—*
 - (A)(i) *appoint a Deputy Ombudsman for each region of the Agency; and*
 - (ii) *hire such other assistants and employees as the Ombudsman determines to be necessary to carry out this section; and*

(B) supervise, evaluate, and carry out personnel actions (including hiring and dismissal) with respect to any employee of the Office.

(2) *DELEGATION OF AUTHORITY.*—The Ombudsman may delegate to other employees of the Office any responsibility of the Ombudsman under this section except—

(A) the power to delegate responsibility;

(B) the power to issue subpoenas; and

(C) the responsibility to make recommendations to the Administrator.

(3) *CONTACT INFORMATION.*—The Ombudsman shall maintain, in each region of the Agency, a telephone number, facsimile number, electronic mail address, and post office address for the Ombudsman that are different from the numbers and addresses of the regional office of the Agency located in that region.

(4) *REPORTS.*—The Ombudsman—

(A) shall, at least annually, publish in the Federal Register and submit to the Administrator, the President, the Committee on Environment and Public Works of the Senate, and the Committee on Energy and Commerce of the House of Representatives a report on the status of health and environmental concerns addressed in complaints and cases brought before the Ombudsman in the period of time covered by the report;

(B) may issue reports, conclusions, or recommendations concerning any other matter under investigation by the Office;

(C) shall solicit comments from the Agency concerning any matter under investigation by the Office; and

(D) shall include any comments received by the Office in written reports, conclusions, and recommendations issued by the Office under this section.

(f) *PENALTIES.*—An investigation conducted by the Ombudsman under this section constitutes—

(1) a matter under section 1001 of title 18, United States Code; and

(2) a proceeding under section 1505 of title 18, United States Code.

(g) *EMPLOYEE PROTECTION.*—

(1) *IN GENERAL.*—No employer may discharge any employee, or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment of the employee, because the employee (or any person acting at the request of the employee) complied with any provision of this section.

(2) *COMPLAINT.*—Any employee that, in the opinion of the employee, is discharged or otherwise discriminated against by any person in violation of paragraph (1) may, not later than 180 days after the date on which the violation occurs, file a complaint in accordance with section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851).

(h) *APPLICABILITY.*—

(1) *IN GENERAL.*—This section—

(A) does not limit any remedy or right of appeal; and
(B) may be carried out notwithstanding any provision of law to the contrary that provides that an agency action is final, not reviewable, or not subject to appeal.

(2) *EFFECT ON PROCEDURES FOR GRIEVANCES, APPEALS, OR ADMINISTRATIVE MATTERS.*—The establishment of the Office does not affect any procedure concerning grievances, appeals, or administrative matters under this Act or any other law (including regulations).

(i) *AUTHORIZATION OF APPROPRIATIONS.*—

(1) *IN GENERAL.*—There are authorized to be appropriated to carry out this section—

(A) \$3,000,000 for each of fiscal years 2004 and 2005;

(B) \$4,000,000 for each of fiscal years 2006 through 2009; and

(C) \$5,000,000 for each of fiscal years 2010 through 2013.

(2) *SEPARATE LINE ITEM.*—In submitting the annual budget for the Federal Government to Congress, the President shall include a separate line item for the funding for the Office.

* * * * *

