Directors, and CSO communities can take to address their concerns.

The objective of this guidance is to lay a strong foundation for integrating CSO long-term control planning with water quality standards reviews. Reaching early agreement among CSO communities, States, EPA, and the public on the data to be collected and the analyses to be conducted to support the long-term control plan development and water quality standards reviews can facilitate the review of water quality standards and the reconciliation of water quality standards with an affordable, well-designed and operated CSO control programs.

The guidance describes the process for integrating LTCP development and implementation with the water quality standards review. This process is the centerpiece of EPA's renewed commitment to assure that both communities with combined sewer systems and States participate in implementing the water quality-based provisions in the CSO Control Policy. The CSO Control Policy anticipates the ''review and revision, as appropriate, of water quality standards and their implementation procedures when developing CSO control plans to reflect site-specific impacts of CSOs.'' Integrating CSO long-term control planning with water quality standards reviews requires extensive coordination among CSO communities, States, EPA, and the public. Although this coordination is an intensive iterative process, it provides greater assurance that CSO communities will implement affordable CSO control programs that support the attainment of appropriate water quality standards.

Dated: December 20, 2000.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 01–113 Filed 1–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6928–8]

Draft Guidance for National Hazardous Waste Ombudsman and Regional Superfund Ombudsmen Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of available draft guidance with request for comment.

SUMMARY: The Environmental Protection Agency (EPA) has developed and is requesting comment on the ''Draft Guidance for National Hazardous Waste Ombudsman and Regional Superfund Ombudsmen Program.'' The Office of Solid Waste and Emergency Response (OSWER) National Hazardous Waste and Superfund Ombudsman (National Ombudsman) and the Regional Superfund Ombudsmen (Regional Ombudsmen) were established to provide help to the public in resolving issues and concerns raised about the solid and hazardous waste programs administered by OSWER.

The purpose of this draft guidance is to explain the role of the Ombudsmen, their scope of activity, and the guidelines under which they coordinate and carry out their responsibilities. EPA believes this draft guidance will improve the effectiveness of this program by giving the Ombudsmen and those who may contact them a clear and consistent set of operating policies and expectations.

DATES: To make sure we consider your comments we must receive them by March 5, 2001. Comments received after that date will be considered to the extent feasible; however, EPA will not delay finalizing the guidance to accommodate late comments.

ADDRESSES: You may request copies of the ''Draft Guidance for National Hazardous Waste Ombudsman and Regional Superfund Ombudsmen Program'' by any of the following ways:

Mail: write to: Docket Coordinator, Headquarters, U.S. EPA, CERCLA Docket Office, (Mail Code 5201G), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Phone: call: (703) 603–9232, or (800) 424–9346.

Internet: http://www.epa.gov/swerrims/whatsnew.htm

If you wish to send us comments on the guidance, you must send them in any one of the following ways:

Mail: Docket Coordinator, Headquarters, U.S. EPA, CERCLA Docket Office, (Mail Code 5201G), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Express Mail or courier (such as Federal Express, other overnight delivery, or courier): Docket Coordinator, Headquarters, U.S. EPA, CERCLA Docket Office, 1235 Jefferson Davis Highway, Crystal Gateway #1, First Floor, Arlington, Virginia, 22202.

E-mail: in ASCII format only to: *superfund.docket@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Caroline Previ, phone number (202) 260–2593, Office of Solid Waste and Emergency Response (Mail Code 5101), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, or the Superfund Hotline, phone number (800) 424–9346 or (703) 412–9810 in the Washington, D.C. metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction

The program managers and staff in the Regions and at Headquarters are committed to implementing the federal solid waste and hazardous waste statutes managed by EPA, being responsive to the public, and resolving issues and concerns brought to their attention. In some cases, the individual or group raising a given concern does not believe the official problem solving channels dealt fairly or fully with their situation. In such cases, the individual or group may request assistance from the Office of Solid Waste and Emergency Response (OSWER) Ombudsman, an Agency official designated to receive inquiries and complaints about the administration of OSWER programs. The National and Regional Ombudsmen receive many calls for assistance each year—ranging from routine questions about hazardous waste laws to specific complaints about allegedly improper activities conducted at a site or facility.

Today's **Federal Register** notice introduces a policy entitled ''Draft Guidance for National Hazardous Waste Ombudsman and Regional Superfund Ombudsmen Program'' which explains the role and conduct of the OSWER National Ombudsman and the Regional Superfund Ombudsmen, scope of their activity, and the guidelines under which they coordinate and carry out their responsibilities. The main objective in issuing this guidance is to improve the effectiveness of this program by giving the Ombudsmen and those who may contact them a clear and consistent set of operating policies and expectations. This draft guidance would cover only the Ombudsmen who work on OSWER related issues, and staff who supply primary support or assistance to the Ombudsmen.

This guidance, when finalized, is not intended to be, and should not be construed as a rule. Use of the guidance would not be legally binding on EPA managers or staff or on other parties. EPA is seeking public comment at this time to ensure hearing the widest range of views and obtaining all information relevant to the development of the guidance.

II. Background

The hazardous and solid waste management laws passed by Congress created some of the most complex programs administered by EPA and the

States. Recognizing this, Congress established a National Ombudsman function in 1984 as part of amendments to the Resource Conservation and Recovery Act (RCRA) so that the public would have someone to come to with questions and concerns about the RCRA program. Soon after, we issued the ''Hazardous Waste Ombudsman Handbook'' to help the newly created National Ombudsman administer, and the public understand what to expect from, the Ombudsman program. During the initial years of the National Ombudsman program, most of the assistance sought by the public was for help understanding the complex RCRA program. The Ombudsman spent most of his time responding to general questions and directing requests to the appropriate sources. The handbook reflected this role.

When the statutory authority for the National Ombudsman program expired in 1989, OSWER retained the function as a matter of policy. In 1991, OSWER broadened the National Ombudsman's scope of activity to include other programs administered by OSWER, particularly the Superfund program. The National Ombudsman is located in the EPA Headquarters office in Washington, DC.

In 1995, EPA created a Regional Superfund Ombudsman position in each EPA Regional office as part of the Superfund Administrative Reforms. The Regional Ombudsmen program, at a minimum, operates in support of the Superfund program, but—depending on the Region—may also provide support to other programs, including RCRA, Underground Storage Tanks (UST), and chemical emergency prevention and preparedness.

Over the years, the public gained a better understanding of EPA's hazardous waste programs. Requests for answers to basic questions more frequently became requests for resolution of complaints. The Ombudsman function evolved to reflect these changes. The existing guidance no longer reflects the Ombudsman function as it has evolved.

In the Fall of 1999, the EPA established an internal workgroup to update the ''Hazardous Waste Ombudsman Handbook.'' In preparing the updated guidance, the workgroup met with representatives of the U.S. Ombudsman Association, and evaluated and considered guidance documents from this organization, as well as other organizations with Ombudsman programs and the American Bar Association's draft Standards for the Establishment and Operation of Ombudsman Offices. To the extent possible, EPA has drafted guidelines which reflect key aspects of various external models in a manner that supports the Ombudsman's independent operation within the context of a civil service position within the Federal government structure. EPA developed these procedures to meet the specific needs of the OSWER Ombudsman program and they may not be completely consistent with Ombudsmen principles established by other organizations.

The draft guidance explains to the public the role of the National Hazardous Waste and Superfund Ombudsman and Regional Superfund Ombudsmen today, their scope of activity, and the guidelines under which they coordinate and carry out their responsibilities. We believe the draft guidance will provide for effective and fair implementation of OSWER's Ombudsman program.

III. Summary of Draft Guidance

The draft ''Guidance for the National Hazardous Waste and Superfund Ombudsman and Regional Superfund Ombudsmen Program'' puts forth our philosophy concerning the basic operating principles and procedures for the OSWER Ombudsman program. Ombudsmen functioning under this guidance are authorized to provide information and look into complaints and grievances related to OSWER's administration of the programs implemented under the following authorities:

- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund
- Resource Conservation and Recovery Act (RCRA), including Underground Storage Tanks (UST)
- Emergency Planning and Community Right-To-Know Act (EPCRA) or Superfund Amendments and Reauthorization Act, Title III
- Oil Pollution Act
- Clean Air Act, Section 112r

The Ombudsman may be called to serve in a number of capacities: (1) providing information and facilitating informal contact with EPA staff, (2) conducting informal inquiries and developing recommendations to address difficult problems, (3) helping to mediate disputes, and (4) making recommendations to Agency senior management regarding procedural and policy changes aimed at improving the program. The goal of the Ombudsman program is to respond to requests in an appropriate, transparent and objective manner as promptly, informally and discretely as possible. The guidance briefly discusses each of these functions, but we anticipate that a significant amount of the Ombudsman's time will be dedicated to looking into issues raised by the public concerning decisions that EPA has made. Because of this, most of the draft guidance is devoted to outlining the Ombudsman's responsibilities in carrying out this activity. Overall, the Ombudsman's role is to listen to all sides in an impartial, objective manner, to provide assistance in trying to understand and resolve the problem, and, if necessary, to recommend possible solutions to senior Agency managers. It is important to note that the Ombudsman does not have authority to change decisions made by program managers or staff.

Generally, the National Ombudsman handles cases of national significance. The Regional Ombudsmen handle the more routine requests for assistance and conducts more informal inquiries to investigate complaints. The guidance explains how the Ombudsman will evaluate requests for assistance, and how inquiries will be conducted.

Whatever capacity the Ombudsman is serving in, he is expected to act with independence, impartiality and confidentiality—the basic operating principles of all Ombudsmen. The guidance provides a brief description of how the Ombudsman will demonstrate these responsibilities effectively and discusses limitations with respect to confidentiality imposed by existing laws and regulations that the OSWER Ombudsman must abide by as federal civil servant.

Our goal is to receive feedback on the draft guidance from the widest range of interested parties possible. We welcome comments on any or all aspects of the guidance. Your comments will help us improve this document. We invite you to provide your comments on our approach and your ideas on alternative approaches we have not considered. Explain your views as clearly as possible and provide a summary of the reasoning you used to arrive at your conclusions. Tell us which parts of the guidance you support, as well as the parts with which you disagree. Your comments must be submitted by March 5, 2001. EPA will review the public comments received on the guidance and where appropriate, incorporate changes responsive to those comments.

We specifically request your comments on the following three topics related to the independence of the Ombudsman. These issues emerged as key issues during the development of this guidance.

1. Does the Organizational Structure of the Ombudsman Program Impact the Independence of the Ombudsman?

One of the main principles an Ombudsman operates under is the ability to work independently in determining which complaints to investigate, how an inquiry should proceed and what are the findings of an inquiry. EPA recognizes the importance of an Ombudsman being and appearing to be independent from the organization he/she is investigating. EPA believes both the National Ombudsman and the Regional Ombudsmen are able to look independently into problems and facilitate the communication that can lead to a solution. We do not select which cases the Ombudsman will take, nor direct how the Ombudsman will investigate a complaint. We do not interfere with or attempt to influence the Ombudsman as he formulates his findings and recommendations.

From the time Congress established the National Ombudsman, this function has been a federal government employee reporting to a senior Agency official. Because the Ombudsman is a federal employee, he/she cannot be completely independent in the normal course of relations between a supervisor and his/her employee. Currently, the National Ombudsman reports directly to the Assistant Administrator for OSWER. We believe this is the appropriate reporting structure for the National Ombudsman. The Assistant Administrator for OSWER is the senior presidential appointee responsible for the programs the Ombudsman is looking into and he/she is in the best position to use the advice of the National Ombudsman. For the most part, each Regional Ombudsman reports to the appropriate Regional Superfund division director, directly or through an intermediate supervisor. No matter what capacity an Ombudsman is serving in at any given time, we have worked to ensure the Ombudsman's ability to operate with maximum independence.

The organizational location and operation of the National Ombudsman and the Regional Ombudsmen is a matter of EPA discretion. We agree that it is very important that the Ombudsman be and appear to be independent from the organization he is investigating.

Does this structure ensure the appropriate level of interaction between the OSWER Ombudsman and senior EPA officials while maintaining enough independence for the Ombudsman to operate effectively?

2. Should the Ombudsman Have Sole Discretion To Decide How Cases Are To Be Handled?

The guidance states that the National and Regional Ombudsmen have the discretion either to accept a request for assistance or decline to act. While the National Ombudsman and the Regional Ombudsmen work fairly autonomously, coordination in this area is crucial. Requests for assistance may come directly to either the National or a Regional Ombudsman. To avoid duplication of effort, the guidance lays out general procedures for evaluating incoming requests.

The guidance requires that before conducting an inquiry that is primarily related to one Region, the National Ombudsman will consult with the relevant Regional Ombudsman. We believe this consultation will help the National Ombudsman make a fully informed decision about whether it is more appropriate for him/her to handle the matter, to refer it to the Regional Ombudsman, or to decline to investigate. Similarly, a Regional Ombudsman is expected to notify the National Ombudsman if he/she has been requested to conduct an inquiry that may be nationally significant. The Regional Ombudsman should discuss with the National Ombudsman how he/she plans to proceed with the inquiry, including the level of involvement that the National Ombudsman wishes to have in the inquiry.

We expect that a Regional Ombudsman and the National Ombudsman almost always will agree on who should handle an inquiry. In those rare situations when there is not agreement the Assistant Administrator or Deputy Assistant Administrator for OSWER will resolve the dispute. The guidance requires the Regional Ombudsman (in consultation with the appropriate Regional Administrator or Deputy Regional Administrator) and the National Ombudsman will each forward a memorandum to the Assistant Administrator for OSWER, or jointly hold a conference call explaining his/her perspective on the disagreement. The Assistant Administrator or Deputy Assistant Administrator for OSWER will then make the decision about who should handle the inquiry.

Is this the appropriate way to resolve such disputes?

3. Should an Ombudsman's Scope of Inquiry Be Restricted To Protect EPA's Litigation Position?

We considered three alternative approaches to this question. The approach we selected and which is reflected in the draft guidance generally precludes the Ombudsmen from investigating an issue or dispute which is in litigation, *i.e.,* pending before a court. The presumption is that Ombudsmen should not take action on an issue or dispute which is in litigation since that issue is in the hands of an independent tribunal for decision, as provided for by the relevant statute. In addition, the public has access to that tribunal to raise serious concerns. For example, in the case of a consent decree presented to a court, public comment will be solicited on the decree, and the court will consider those comments and then determine if it is in the public interest to enter the decree. In the case of a challenge to agency action, affected members of the public can intervene and present argument to the court, and the court will decide whether we demonstrated an adequate basis for its action and whether we acted in a non-arbitrary manner and in accordance with law. This approach also avoids creating the false impression that the Ombudsman's office is an alternative forum for arguing controversial issues, which would result in confusion, inefficiency, and potentially conflicting statements about the Agency's position. The OSWER Ombudsman program is not intended or authorized to circumvent existing channels of management authority or established formal administrative avenues of appeal.

However, we believe that there may be situations where it is appropriate for the Ombudsman to investigate actions EPA has taken, even where those actions are before a court for review. For instance, the Ombudsman may have information to suggest that our action at issue in the legal proceedings is infirm or erroneous. Or the Ombudsman may bring to Agency management information of significant public concern about an Agency action at issue in the courts. In either case, if the Ombudsman believes an inquiry is necessary, he/she should communicate that information to the appropriate Agency official before proceeding with his/her inquiry. Such an investigation would proceed only after concurrence by the Assistant Administrator or Deputy Assistant Administrator for OSWER or the appropriate Regional Administrator or Deputy Regional Administrator, in consultation with EPA's lead litigation office, taking into account its potential impact on pending litigation.

It should be noted that this presumption against investigations applies to an ''issue or dispute'' that is before a court for consideration. Thus,

the fact that a site or facility is in litigation does not necessarily mean that the Ombudsman should refrain from conducting an investigation of all issues arising at that site or facility. For instance, if the issue before a court is the authority of the Agency to get access to a piece of property, that would not create a presumption against an investigation of alleged deficiencies regarding remedy selection.

For your information, we are providing details of the two alternative approaches to this matter we considered but did not select. The first alternative approach removed any restrictions on the Ombudsman's ability to conduct an inquiry concerning an issue or dispute which is in litigation. The Ombudsman would be free to conduct an inquiry regardless of whether an issue or dispute was in litigation.

The second alternative approach would restrain the Ombudsman from conducting new fact gathering concerning decisions made based on the administrative record. The Ombudsman would remain able to audit the existing information and data that were part of the Agency's factual record. Under this model, if the Ombudsman concluded that additional fact finding and data gathering were necessary, that would become part of his recommendation. If the Agency agreed with this recommendation, it would conduct additional information gathering by utilizing the appropriate program staff and established procedures. The Ombudsman would be precluded from undertaking separate fact finding activities such as public meetings and formal on-the-record interviews. This approach would address concerns that an Ombudsman's activities may create a second record outside of the official administrative record, which could confuse and potentially mislead the public and could damage the Agency's position during litigation.

Is the chosen approach the most appropriate?

Dated: December 27, 2000.

Michael Shapiro,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 01–112 Filed 1–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6928–3]

Clean Water Act Section 303(d): Availability of Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 88 TMDLs prepared by EPA Region 6 for waters listed in Louisiana's Mermentau and Vermilion/Teche river basins, under section 303(d) of the Clean Water Act (CWA). EPA prepared these TMDLs in response to a Court Order dated October 1, 1999, in the lawsuit *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Under this court order, EPA is required to prepare TMDLs when needed for waters on the Louisiana 1998 section 303(d) list by December 31, 2007.

DATES: Comments on the 88 TMDLs must be submitted in writing to EPA on or before February 2, 2001.

ADDRESSES: Comments on the 88 TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for these TMDLs is available for public inspection at this address as well. Copies of the TMDLs and their respective calculations may be viewed at www.epa.gov/region6/water/tmdl.htm, or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. Discussion of the court's order may be found at 65 FR 54032 (September 6, 2000).

EPA Seeks Comments on 88 TMDLs

By this notice EPA is seeking comment on the following 88 TMDLs for waters located within the Mermentau and Vermilion/Teche basins:

Subsegment	Waterbody name	Pollutant
060205	Bayou Teche—Headwaters At Bayou Courtableau to I–10	Salinity/TDS.
060211	West Atchafalaya Borrow Pit Canal	Salinity/TDS.
060301	Bayou Teche—I–10 to Keystone Locks and Dam	Salinity/TDS. Chlorides.
050201	Bayou Plaquemine Brule—Head-Waters to Bayou Descannes	Ammonia.
050401	Mermentau River—Origin to Lake Arthur	Ammonia.
060102	Cocodrie Lake	Noxious Aquatic. Plants & Ammonia. Chlorides. Sulfate.
060204	Bayou Courtableau—Origin to West Atchafalaya Borrow Pit Canal	Ammonia. Salinity/TDS.
060203	Chicot Lake	Noxious Aquatic. Plants & Nutrients.
050101	Bayou Des Cannes—Headwaters to Mermentau River	Nutrients.
050301	Bayou Nezpique—Headwaters to Mermentau River	Nutrients.
060202	Bayou Cocodrie	Nutrients.
060208	Bayou Boeuf—Headwaters To Bayou Courtableau	Nutrients.
060211	West Atchafalaya Borrow Pit Canal	Sulfates.
060301	Bayou Teche—I–10 to Keystone Locks and Dam	Sulfates.
050101	Bayou Des Cannes—Headwaters to Mermentau River	Total Suspended Solids (TSS).
050102	Bayou Joe Marcel	TSS.
050103	Bayou Mallet	TSS.