

## **Ombudsman losing power, EPA reveals**

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WASHINGTON — U.S. Environmental Protection Agency Administrator Christine Todd Whitman has said that the agency's ombudsman would enjoy greater independence after a forced transfer earlier this year.

But EPA officials told a congressional panel Tuesday that one of the consequences of the move has been to deprive the ombudsman of the ability to mediate conflicts between the agency and people who live near Superfund sites, including the Industrial Excess Landfill in Stark County's Lake Township.

The ombudsman's job in the past has included responding to citizen complaints, evaluating agency cleanup plans and recommending changes where warranted.

The revelation of the ombudsman's changed role emerged during a House committee hearing called by Rep. Michael Bilirakis, R-Fla. He convened the hearing to assess the effectiveness of the ombudsman since Whitman moved the function to the EPA inspector general's office in April, he said.

Then-ombudsman Robert Martin resigned after being transferred. Martin said moving the office, in effect, destroyed it. He repeated that charge at the hearing Tuesday.

After Martin's departure, Inspector General Nikki Tinsley appointed auditor Mary "Peggy" Boyer to replace him as acting ombudsman.

During the hearing, Republican and Democratic lawmakers alike criticized the transfer.

Rep. Sherrod Brown, D-Lorain, said he was "concerned like many others that the administrator has sought to marginalize the ombudsman because the office has done too good a job of pointing up the agency's shortcomings, and not to make it more independent, as she claims."

Referring to the moving of Martin's files to the inspector general's office while the ombudsman was away on official business, Rep. John Shimkus, R-Ill., said he was "pretty appalled at the treatment of Mr. Martin" by the EPA.

During a decade as ombudsman, Martin examined cleanup efforts around the country, including at the Industrial Excess Landfill. In some cases, his investigations led him to issue recommendations that persuaded the agency to reverse or modify its plans.

For instance, in Denver, the EPA agreed to remove radioactive waste from a closed factory in a residential neighborhood after previously deciding to encapsulate it there.

In other situations, Martin brought citizens, the government and companies responsible for paying for cleanups together to find common ground and a solution acceptable to all parties.

"The role of an ombudsman typically includes responsibilities such as helping to informally resolve program-related issues and EPA disagreements between the agency and the public," John Stephenson, director of natural resources and environment for the General Accounting Office, told the House panel.

But such informal mediation is no longer possible with the ombudsman in the inspector general's office, he said. According to Stephenson, the legislation that created the inspector general's office "prohibits the transfer of program operating responsibilities to the inspector general."

As a result, added Hugh Kaufman, a longtime EPA employee who previously served as Martin's chief investigator, "there is no function now in EPA to change decisions."

Kaufman said Martin used mediation to persuade the EPA "80 percent of the time to change their decisions."

EPA attorneys acknowledged that the ombudsman no longer will become involved in mediation between citizens, the agency and others.

Responding to a question from Rep. Diana DeGette, D-Colo., Mark Bialek, counsel for the inspector general, said, "If what you're asking is will we mediate on, will we arbitrate those kinds of disputes acting in that capacity, the answer is no."

He added: "What we do intend to do is to assess and review all complaints in an impartial and objective manner, to assess the quality of EPA program management and decision making and to issue reports to Congress and EPA with findings and recommendations that are designed to solve problems."

Martin also came in for criticism at the hearing. Bialek said the inspector general's staff still was trying to organize 130 boxes of ombudsman case files, which he said are disorganized.

Martin disagreed with the characterization, saying that when he was ombudsman he could find anything he needed from his files within an hour. Rep. Paul Gillmor, R-Old Fort, asked Martin about claims that since 1997, he had only resolved two cases while opening 19.

"It does not appear to be a good use of government resources," Gillmor said.

Martin responded that many cases remained open while he was "engaged in a lot of mediation or alternative dispute resolution" at the hazardous waste sites. He also blamed lack of staff — Martin had one to two people working for him at most — for not closing cases more quickly.

Another consequence of the transfer of the ombudsman's office is that the ombudsman is limited in providing information about hazardous waste sites and cleanup plans, officials said.

Bialek said the ombudsman will not "be disseminating information about programs or operations." The office will refer callers seeking such information to other departments, he added.

Several lawmakers at the hearing urged the EPA to rehire Martin temporarily to finish up his investigations, something Martin has said he is willing to do.

Some of the same representatives said the only way to make the ombudsman truly independent is through legislation.

Bilirakis has sponsored legislation, but he and others expressed doubts about its chances of passage.