

NEIC

EPA-330/2-9-78-001-R

NEIC POLICIES AND PROCEDURES MANUAL

May 1978

[Revised August 1991]

U.S. Environmental Protection Agency



Office of Enforcement

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENFORCEMENT**

EPA-330/2-9-78-001-R

NEIC POLICIES AND PROCEDURES MANUAL

May 1978
[Revised August 1991]

**NATIONAL ENFORCEMENT INVESTIGATIONS CENTER
Denver, Colorado**

FOREWORD

The National Enforcement Investigations Center (NEIC) is the organizational element of the Office of Enforcement which provides a full range of technical, investigative, and litigation support expertise for the Agency's administrative, civil, and criminal enforcement cases. NEIC focuses on those nationally and regionally significant enforcement initiatives which require:

- Development and/or application of new methods and procedures/approaches for enforcement investigations, case development/management, and resolution
- Methods/procedures developed and used for a specific project or case in one region which can be applied nationally or on a multi-regional basis for improving the EPA enforcement program and addressing and achieving risk reduction objectives
- Evaluation, review, and/or support of proposed pollution controls, abatement, and remedial measures applying innovative engineering and scientific technology with subsequent widespread application
- Investigation of special environmental compliance problems where an initial application and/or innovative interpretation of statutory and regulatory requirements is necessary
- Defense of the methods and techniques used and/or positions taken by the government during legal proceedings/settlement negotiations
- State-of-the-art litigation support, information/records management, and evidence audits for the Agency's priority cases.

NEIC maintains expert staff and sophisticated equipment capabilities for conducting investigations throughout the United States. NEIC has the ability to:

- Plan and manage a wide range of environmental investigations
 - Conduct comprehensive multi-media investigations
 - Gather and analyze information on facilities and businesses from a variety of EPA and other databases
 - Perform industrial process evaluations

- Evaluate the adequacy and validity of data collection and analyses
- Review and develop analytical techniques, methodologies, and computer information systems
- Implement enforcement strategies in coordination with the Office of Enforcement, other EPA Headquarters and Regional Offices
 - Assist in the preparation of cases for litigation
 - Provide specialized and expert testimony on a wide variety of subjects
 - Provide assistance to EPA's delegated state enforcement programs including state criminal enforcement efforts
- Provide training to federal and state employees regarding environmental investigations and enforcement

The primary objective of NEIC is to provide expertise and resources for development and support of federal and state civil and criminal enforcement cases. To meet this objective, NEIC has established the following policies and procedures. These emphasize the need to (a) thoroughly understand the applicable environmental laws and regulations; (b) clearly identify project objectives; and (c) adequately plan and implement all field, laboratory, and other support activities.

The goal of this manual is to present procedures for collection and development of admissible and defensible evidence in support of the Agency enforcement programs. In instances where these prescribed procedures are inappropriate or inadequate, NEIC personnel may use alternate procedures after securing the approval of their supervisor or consulting with the Enforcement Specialist Office, as appropriate.

This manual contains policies and procedures developed solely to provide internal guidance to NEIC employees and its contractors. The policies and procedures which are set forth do not create any rights, substantive or procedural, enforceable at law by a party to litigation with EPA or the United States.

NEIC makes available, through various forums, the expertise it has developed by conducting enforcement investigations, supporting litigation / settlement negotiations, etc.

CONTENTS

FOREWORD	i
ORGANIZATION CHART	iii
 I. <u>GENERAL POLICIES AND PROCEDURES</u>	
CONFLICTS OF INTEREST, GIFTS, AND GRATUITIES	1
PUBLIC RELATIONS	2
ENTERING FACILITIES	2
Authority	2
Entry Procedures	5
Denial-of-Entry Procedures	6
INVESTIGATIONS OF ALLEGED CRIMINAL ACTIVITY	6
COMMUNICATIONS EXTERNAL TO OFFICE OF ENFORCEMENT	7
Requesting Information from Persons Subject to Regulation	9
Disclosure of Official Information to the Public	10
FOIA Response Procedures	10
 II. <u>PROJECT MANAGEMENT</u>	
PROJECT REQUEST	12
PROJECT TEAM FORMATION	15
Civil Investigations	15
Criminal Investigations	16
BACKGROUND INFORMATION REVIEW	16
PROJECT PLAN PREPARATION	17
PROJECT PLAN IMPLEMENTATION	20
REPORT PREPARATION	20
ENFORCEMENT CASE SUPPORT	22
 III. <u>EVIDENCE MANAGEMENT</u>	
SAMPLE CONTROL	24
Sample Identification	24
Split Samples	25
Chain-of-Custody for Samples	26
Sample Custody	26
Transfer of Custody and Shipment	29
Laboratory Custody	29

CONTENTS (continued)

III. EVIDENCE MANAGEMENT (continued)

DOCUMENT CONTROL	32
Project Logbooks	33
Sample Tags	34
Chain-of-Custody Records	34
Lidar Magnetic Tapes	35
Laboratory Records	35
Photographs	36
Corrections to Documentation	37
Consistency of Documentation	37
Branch/Division Files	38
Evidentiary Files	38
Litigation Documents	39
Confidential Business Information	39
EVIDENCE AUDIT	40
QUALITY ASSURANCE	41

APPENDIX

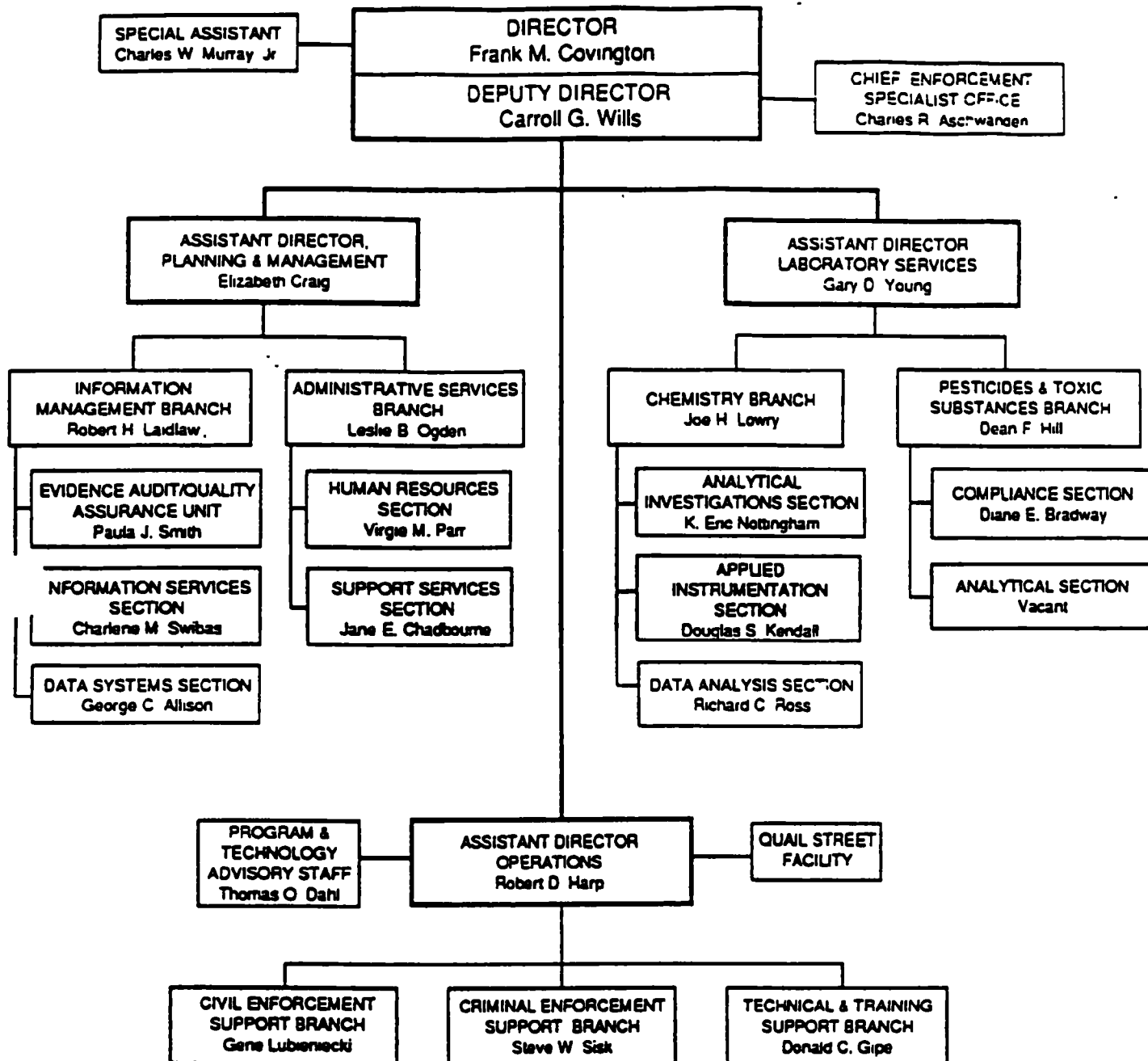
Witness Guidelines

FIGURES

1 .	Project Management Procedures	13
2	Receipt for Samples	27
3	Completed Receipt for Samples	28
4	Chain-of-Custody Record	30
5	Completed Chain-of-Custody Record	31

TABLES

1	Authorities Granted Under Federal Environmental Laws and Regulations for Administrative/Civil Investigations	3
2	Transmittal of NEIC Documents and Correspondence	8



I. GENERAL POLICIES AND PROCEDURES

CONFLICTS IN INTEREST, GIFTS, AND GRATUITIES

Each NEIC employee is expected to promote public confidence in the integrity, reliability, and dependability of the Environmental Protection Agency. Employees are required to perform their duties in a dignified, tactful, courteous, and diplomatic manner, as the situation dictates. At all times they must comply with the regulations governing EPA employee conduct (40 CFR Part 3). Employees should consult their supervisors and/or the Enforcement Specialist Office for guidance on ethics issues. For general information regarding ethics refer to:

Ethics in a Nutshell... Ethical Conduct for EPA Employees... in Brief, U.S. EPA, Office of the Inspector General (March 1988)

U.S. EPA Employee Responsibilities and Conduct, U.S. EPA Office of General Counsel (February 1984)

EPA's Guidance on Ethics and Conflicts of Interest (February 1984)

Employees shall avoid actual and apparent conflicts of interest through outside employment and other private interests or activities. A conflict of interest may exist whenever an EPA employee has a direct or indirect personal interest in a matter which is related to his official duties and responsibilities. Each NEIC employee must avoid even the appearance of a conflict of interest because the appearance of a conflict damages the integrity of the Agency and its employees in the eyes of the public. All employees must, therefore, avoid situations which are, or give the appearance of, conflicts of interest when dealing with others in or outside the government. Any information acquired during an employee's duties is for official use only.

An employee is forbidden to solicit or accept any gift, gratuity, entertainment, favor, loan, or any other item of monetary value from any person, corporation, or group which has interests that may be substantially affected by such employee's official actions, or which conducts operations regulated by EPA. Further guidance on EPA's policy for accepting gifts, gratuities or entertainment may be found at 40 CFR 3.400.

PUBLIC RELATIONS

Good working relations should be established when dealing with the public, including personnel at facilities being investigated. This can best be accomplished by using diplomacy, tact, and persuasion. Employees should not speak of any person, other regulatory agency, or facility in a derogatory manner, and should avoid providing a professional opinion on specific products or projects.

Good public relations and common sense dictate that employees dress appropriately for the activity in which they are engaged. This includes wearing the proper protective clothing and using safety equipment, as appropriate.

ENTERING FACILITIES

Authority

Federal environmental statutes grant EPA enforcement personnel authority to enter and inspect facilities [Table 1]. Each authority is similar to that stated below from Section 308 of the Clean Water Act.

Table 1

**AUTHORITIES GRANTED UNDER FEDERAL ENVIRONMENTAL LAWS AND REGULATIONS
FOR ADMINISTRATIVE/CIVIL INVESTIGATIONS**

	Air	Water	Superfund	Pesticides	Solid Waste	Drinking Water	Toxics
Inspection Authority	CAA 114 40 CFR 80.4, 86*	CWA 308, 402 40 CFR 122.41, 233.7	CERCLA 104	FIFRA 8, 9 40 CFR 160.15, 169.3	RCRA 3007, 9005 40 CFR 270.30	SDWA 1445 40 CFR 144.51, 142.34	TSCA 11 40 CFR 717.17, 792.15
Recordkeeping Authority	CAA 114, 208, 311 40 CFR 51, 60, 79**	CWA 308, 402 40 CFR 122.41, 122.48, 233.7, 233.11	CERCLA 103	FIFRA 4, 8 40 CFR 160.63, 160.185-195, 169, 171.11	RCRA 3001, 3002, 3003, 3004, 9003 40 CFR 262.40, 263.22, 264.74, 264.279, 264.309, 265.74, 265.94, 265.279, 265.309, 270.30, 270.31	SDWA 1445 40 CFR 144.51, 144.54, 141.31-33	TSCA 8 40 CFR 704, 710, 717.5, 720.78, 76 761.180, 762.60, 763.144, 792.185 195
Confidential Information (40 CFR 2.201-2.215)	CAA 208, 307 40 CFR 2.301, 53, 57, 80	CWA 308 40 CFR 2.302, 122.7, 233.18	CERCLA 104	FIFRA 7, 10 40 CFR 2.307	RCRA 3007, 9005 40 CFR 2.305, 260.2, 270.12	SDWA 1445 40 CFR 2.304, 144.5	TSCA 14 40 CFR 2.306, 704.7, 707.75, 710.7, 712.15, 717.19, 720.85-9; 750.16, 750.36, 762.60, 763.74
Emergency Authority	CAA 303	CWA 504 40 CFR 233.38	CERCLA 104, 106	FIFRA 27 40 CFR 164, 166	RCRA 7003 40 CFR 122.7	SDWA 1431 40 CFR 144.34	TSCA 7
Employee Protection	CAA 322	CWA 507	CERCLA 110		RCRA 7001	SDWA 1450	TSCA 23
Penalties	CAA 113	CWA 309 40 CFR 233.28	CERCLA 103, 112 EPC 325	FIFRA 12, 14	RCRA 3008, 9006	SDWA 1423, 1424, 1431, 1432, 1441	TSCA 15, 16

* 86.077-7, 86.078-7, 86.441-78, 86.606, 86.1006.89

** 51.320-328, 57.105, 57.305, 57.404, 58, 60.7, 61.10, 61.24, 61.69-71, 79.5, 85.407, 85.1086, 85.1906, 86.077-7, 86.084-39 and 40, 86.144-78 through 82, 86.542-7
86.609, 86.1009-84

- "(a)(B) the administrator or his authorized representative ... upon presentation of his credentials
- (i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained ... are located, and
 - (ii) May at reasonable times have access to and copy any records, inspect any monitoring equipment or method ... and sample any effluents which the owner or operator of such source is required to sample."

For investigations conducted pursuant to the Safe Drinking Water Act (SDWA), Toxic Substances Control Act (TSCA), or Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the investigator must provide a responsible official of the facility with a written notice of inspection. In addition, during TSCA inspections, TSCA Confidentiality Notice forms should be offered. At the completion of the TSCA inspection, a Declaration of Confidential Business Information and Receipt for Samples and Documents forms are completed, as appropriate.

Many NEIC inspections are conducted after obtaining consent from the person(s) in charge of a site. Consent means the intentional foregoing of right to privacy, which is not the result of either fear, ignorance, or trickery. When obtaining consent, do not suggest that civil or criminal consequences will result from denial of entry. Consent to photograph on-site activities during any consensual administrative/civil investigation should be obtained before any photographs are taken. In administrative/civil matters, if the element of surprise is critical to the inspection, the site is unoccupied, or prior behavior indicates that entry may be denied, an administrative search warrant may be needed. If so, employees should consult the Enforcement Specialist Office before the inspection is attempted.

While consent may not be necessary for entering a public area, or for acting under emergency conditions, no forcible nonemergency entry is permitted into a private area without a search warrant. When consent is withdrawn after the inspection has begun, the team shall leave the area and follow the procedures for denial of entry as detailed below.

Entry Procedures

To comply with statutory requirements during civil/administrative investigations, a facility should be entered in the following manner.

- The plant premises should be entered through the main gate or through the entrance designated by the facility personnel.
- The inspectors should introduce themselves in a dignified, courteous manner to a responsible plant official, clearly identify the organization they represent, and briefly describe the purpose of the inspection. Identification credentials will always be presented before an inspection is commenced. A responsible plant official may be the owner, operator, officer, or agent-in-charge of the facility, including a person responsible for the plant's environmental affairs.
- If there is only a guard present at the entrance, the employee should present credentials and ask the guard to call his supervisor or the responsible official.
- If the company provides a blank sign-in sheet, log, or visitors' register, it is acceptable to sign it. However, NEIC employees must not sign a release of liability (waiver) or any statement which would place limits on EPA's use of the information for enforcement purposes.
- When problems or questions arise, the NEIC employee should call his supervisor or the Enforcement Specialist Office.

Denial-of-Entry Procedures

If entry is denied, the employee should not contest the issue with the facility representative, but immediately do the following.

- Cite the appropriate EPA administered legislation and inspection authority, ask if he/she heard and understood the reason for your presence, and record the answer and any reasons given for denial of entry.
- Record the name, title, and telephone number of the individual denying entry as well as the date and time.
- Leave the premises.
- If consent is withdrawn after the inspection is already underway, retain all notes, records, and samples, and remove all equipment taken into the facility.

After leaving the facility, the inspector should, at the earliest opportunity, document the events related to the denial of entry and inform the appropriate NEIC supervisory personnel and the Enforcement Specialist Office.

INVESTIGATIONS OF ALLEGED CRIMINAL ACTIVITY

Participants in criminal investigations may be subject to additional requirements governing such investigations. Because of the severe penalties that may be imposed on the individuals convicted of violating the provisions of the environmental laws or other statutes, there is closer scrutiny of constitutional safeguards to protect the individual's rights. Special Agents of the EPA, Criminal Investigations Division, will provide instructions regarding these safeguards to the project team on all investigations in which they are involved. From the beginning of such an investigation until it is completed, the rights of all individuals must be fully protected.

If, during the course of a civil/administrative inspection, aspects of criminal activity become apparent, the inspector should obtain all the evidence documenting the possible violation. The Criminal Investigations Division, or the appropriate Special Agent-in-Charge must then be apprised immediately. If a criminal investigation is opened, any files will be maintained separately from the current (or planned) civil investigation. Where applicable, the Agency's policy on parallel criminal and civil enforcement proceedings shall be followed.

COMMUNICATIONS EXTERNAL TO THE OFFICE OF ENFORCEMENT

In the course of business, NEIC employees communicate with persons outside the Agency's Office of Enforcement. Untimely releases of information and expressions of opinions can greatly hinder NEIC's investigative activities. Judgment is required, and supervisors should be consulted and kept informed of all such communications. For communications regarding matters in litigation and criminal investigations, the Enforcement Specialist Office must be consulted.

NEIC has established internal distribution and filing procedures for all correspondence. Employees producing correspondence should do so through their secretaries or check with their secretaries regarding the internal distribution of correspondence.

Table 2 contains requirements for transmittal of specific documents and correspondence, external to the Office of Enforcement.

Table 2

TRANSMITTAL OF NEIC DOCUMENTS AND CORRESPONDENCE EXTERNAL TO THE OFFICE OF ENFORCEMENT

Subject Matter Transmitted	Signature Required	Recipient
Response to Request for NEIC Assistance	Director/Deputy Director/Assistant Director (or delegatee)	Division Director and Regional Counsel and/or other requestors
Project plans	Director/Deputy Director/Assistant Director	Division Director and Regional Counsel and/or other requestors
Correspondence with facility officials	Chief, Enforcement Specialist Office or Regional Counsel	Facility being inspected
Requests for information	Director or appropriate Regional or Headquarters officials ¹	Facility being inspected, regulated entity or appropriate individual
Draft and Final reports	Chief, Enforcement Specialist Office	Division Director and Regional Counsel and/or other requestors
Reports, draft and final, and other information involving criminal investigations	Chief, Enforcement Specialist Office	Department of Justice, U.S. Attorneys, State Prosecutors, FBI and other criminal investigative agencies
Technical reviews and any documents related to enforcement cases	Chief, Enforcement Specialist Office	Division Director and Regional Counsel and/or other requestors
Project costs/contract costs	Director/Deputy Director/Assistant Director Planning and Management	Requestor and Regional Counsel
Procedures and Operating manuals	Library	As appropriate
Nonenforcement related documents ²	Author	Requestor
FOIA Denials	Director	Requestor

¹ NEIC may also prepare information requests for transmittal by appropriate Regional or Headquarters Officials

² Technical guidance documents, professional papers, requests for technical information unrelated to enforcement activities.

Requesting Information from Persons Subject to Regulation

NEIC employees may request information from a facility before, during, or after an on-site investigation. The environmental statutes require those regulated to keep various records and to make them available to EPA upon request. Several statutes also protect the trade secrets and confidential information of the regulated community.

Any confidential information received in the mail or hand-delivered shall be marked "Confidential" and handled as Confidential Business Information. In compliance with EPA regulations, any written request for company information, pursuant to statutory authority, must contain a statement notifying the facility that it may designate all or part of the information requested by the Agency as confidential in accordance with 40 CFR Part 2.

NEIC personnel should not accept confidential information unless it is needed. When confidential information is entered into an inspector's logbook, the entire logbook must be treated as confidential. The Evidence Audit Unit (EAU) will provide the inspectors with adhesive labels and/or stamps to mark information submittals or logbook notes of observations which are claimed to be confidential. Where documents are provided by the company, the company officials should be requested to mark the document to identify the material which they claim is confidential. Confidentiality claims, which cover portions of otherwise nonconfidential documents, should be clearly identified by company officials. Logbooks must be marked as confidential by the inspector; in no case shall company officials be permitted to copy or review logbooks. See Chapter III of this manual for additional information on the treatment of confidential business information.

By statute, certain information, including effluent, emission, health, and safety data is not entitled to confidential treatment.

Disclosure of Official Information to the Public

EPA policy is to make information about EPA and its work available, freely and equally, to all individuals, groups, and organizations. This policy, however, does not extend to confidential business information or investigatory information relating to the suspected violation of federal laws.

Any NEIC employee who receives a request, written or verbal, for the inspection or disclosure of NEIC investigatory records or confidential information, including those made under judicial discovery procedures, the Privacy Act, or the Freedom of Information Act, shall immediately advise the Chief, Enforcement Specialist Office.

FOIA Response Procedures

The NEIC Director is delegated the authority to respond to Freedom of Information Act (FOIA) requests directed to NEIC. This delegation authorizes the Director to make the initial determination concerning the release of NEIC records. The FOIA procedures and requirements contained in 40 CFR Part 2 Subpart A, EPA Order 1550.1C and the FOIA manual apply to such determinations.

Any NEIC employee, including NEIC contractors, who receive a written request to disclose records, must immediately forward the request, together with its envelope, to the Enforcement Specialist Office (ESO) which will initiate efforts to identify and locate responsive records. Responsive records will not necessarily be released. There are numerous exemptions which permit

or even require NEIC to deny the request in whole or in part. No acknowledgement of the request is necessary.

The ESO will date-stamp and log in the request; coordinate collection of relevant documents; coordinate with appropriate Regional, Headquarters, and Department of Justice (DOJ) attorneys; and prepare the response to the FOIA request.

Denials shall include the basis for withholding the documents requested and a statement that the requestor has the right to appeal the denial. Only the NEIC Director has the authority to deny disclosure of requested records, in whole or part.

II. PROJECT MANAGEMENT

This section discusses how NEIC activities should be planned and implemented so that work is conducted in a timely manner and meets case objectives.

Projects undertaken by NEIC span a wide variety of activities ranging from one employee performing technical or administrative tasks to numerous employees from diverse disciplines working as a team to accomplish a series of complex tasks. NEIC projects can include any or all of the following phases.

- Project request
- Project team formation
- Background information review
- Project plan preparation
- Project plan implementation
- Report preparation
- Enforcement case support

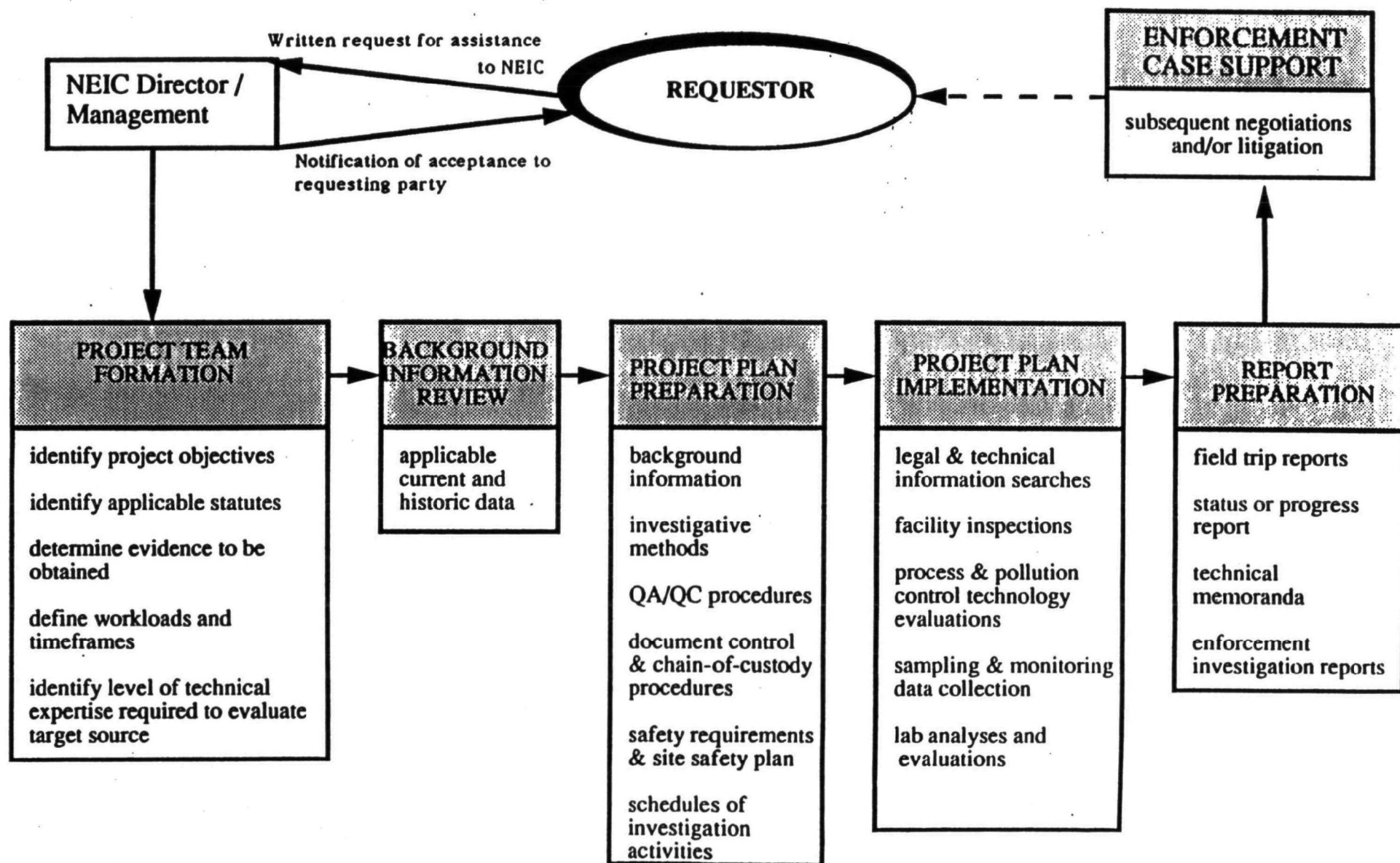
This section of the manual discusses each phase and outlines pertinent NEIC policies [Figure 1].

Not all these phases are required for each NEIC project. Moreover, these phases are not necessarily discrete steps to be performed in order, before going on to the next phase. A project team may repeat or return to any phase during the life of the project and may work on several phases simultaneously.

PROJECT REQUEST

Requests may be received from other offices of EPA, other federal agencies, state agencies, and local governments. Unless otherwise directed, all requests should be sent to the Director of NEIC. Prior to preparing a request,

PROJECT MANAGEMENT PROCEDURES



requesting parties are encouraged to make a preliminary inquiry to determine if NEIC can provide the assistance required. Depending on the type of assistance needed, NEIC may respond to verbal requests. Acceptance of a verbal request is normally given on a tentative basis pending receipt of a written request. Any request should detail the objectives, relate those objectives to the enforcement actions anticipated, specify general time frames for the work and identify the technical and/or legal contact(s) of the requesting office. A written request facilitates understanding of the request by all involved parties. However, routine or recurring requests may not require any written request and NEIC, at its option, may accept any project without a written request.

Requests received by NEIC have included those which require extensive field investigative work on environmental problems (e.g., multi-media investigations), as well as others which require only a limited technical or legal review of a remedial or abatement proposal, or analytical support for Regional enforcement cases. Other requests have involved development of enforcement cases, performance audits, compliance evaluation inspections, pesticide investigations, groundwater investigations and pollution control technology assessments.

NEIC usually will notify the requesting party in writing when it accepts the project. When possible, the notification also will include a tentative schedule. Specific NEIC employees should be named as the contacts for coordination with the requesting party. In addition, the acceptance notice should identify any further information needed by NEIC.

PROJECT TEAM FORMATION

Civil Investigations

Once a project is accepted, a project team is organized. It will include representatives from those NEIC organization units participating in the project. As appropriate, representatives from outside NEIC (e.g., the U.S. Department of Justice) may also participate in team activities and discussions.

The initial functions of the project team are to determine:

- The applicable statutory/regulatory provisions
- The evidence which must be obtained to address project objectives
- The resources and scheduling necessary to achieve objectives
- The technical expertise necessary to evaluate the target or source

The team has the responsibility to identify and minimize potential problems. Team members must be knowledgeable about their respective units' activities in the particular project, and are responsible for describing or defending that activity in subsequent negotiations and/or legal proceedings.

NEIC names a specific individual from the project team as the coordinator. This person generally serves as a central point of contact with the requesting party and is responsible for communicating and coordinating project requirements and information with all involved parties. In addition, this person must assure that a requestor's needs are met, including preparation of the necessary documents and reports.

The makeup and coordination of the project team is dictated by the type of investigation conducted. Sometimes a "team" may consist of only one person.

Criminal Investigations

In criminal investigations, the NEIC project coordinator is responsible for sampling, analysis, and other technical activities and works with the EPA Special Agent, FBI agent, and/or the appropriate U.S. Attorneys' office.

BACKGROUND INFORMATION REVIEW

The purpose of a background information review is to gather information pertinent to the project. This review usually begins before a project plan is written and continues throughout the course of a project. The information obtained is used to prepare the project plan, conduct the field investigation, and write the report.

The scope and duration of the background review are related to the project objectives and vary with project complexity. Background information is available through the in-house and affiliated libraries and the NEIC computerized data retrieval systems. Meetings may be held with EPA Headquarters, Regional offices, and/or state and local agencies, and other federal agencies to discuss the project, and to review and obtain copies of relevant files. Where necessary, a site reconnaissance and/or preliminary site visit provides verification and/or updating of background information. Examples of information obtained and/or reviewed may include:

- Applicable (current and previous) state and federal laws and regulations

- Current and previous permits and permit applications
- Previous inspection reports
- Case files from previous and pending enforcement actions/litigation
- Correspondence between regulatory agencies and the facility
- Administrative Orders, settlement agreements, compliance schedules
- Headquarters/Regional legal strategy and/or policy related to the NEIC investigation
- Specific descriptions of facility processes and pollution control systems
- Self-monitoring data
- Alternative control and treatment technology applicable to the facility(ies) being investigated
- Available and state-of-the art sampling and analytical methods
- Information received through interviews of informants

In all investigations requiring field activities, knowledge of the potential and existing safety hazards associated with the facilities or targets, and local emergency services, is essential.

PROJECT PLAN PREPARATION

The format of a project plan will depend on the scope of the project. Some projects require a detailed plan, describing the objectives, enforcement history, facility operation, investigative methods, safety protocols, etc. In others, a memorandum defining the objectives, tasks, and schedules may suffice. A general outline of NEIC project activities may be included in the

written response to a requesting party. After sufficient background information has been obtained and evaluated, a detailed project plan can be prepared. In many cases, the plan is not completed until planning meetings have been held, files have been reviewed, and a preliminary site visit has been made. Projects requiring only analytical services may not require a project plan. In some cases, the NEIC project acceptance letter is a sufficient project plan, as long as safety issues are addressed, as necessary, in the letter or in a separate safety plan.

The project coordinator, in conjunction with other team members, prepares the project plan detailing the scope, logistics, and objectives. In addition, other items usually addressed in a project plan include the following.

- **Background Information:** For example, background information for a hazardous waste treatment, storage, and disposal facility investigation or an industrial facility evaluation, may include a summary of processes, sources of pollution, their control or treatment, applicable regulations, and permit requirements. In those investigations where there is, or a potential exists for groundwater pollution, information on the geologic and hydrogeologic conditions, and on-site hazardous waste disposal operations, are necessary for plan development.
- **Investigative methods:** For example, this should include a description of sampling locations and procedures, analytical requirements, the on-site records review, and collection of operating process data and information.
- **Quality assurance/quality control procedures**
- **Document control and chain-of-custody procedures**
- **Safety requirements and safety plan for on-site activities**
- **Schedules for investigative activities.** This should include schedules for field work, analyses, reports, etc.

Prior to commencing a field investigation, a briefing session with all project team members should be held. At that time, those aspects of the investigation such as communication with facility personnel, sampling and monitoring requirements, test procedures and analyses, special technical needs, legal aspects, and safety requirements can be discussed.

The project coordinator, as the identified contact person representing the project team, should communicate closely with the requestor during the planning phase to ensure the identified objectives are addressed. The completed project plan represents an agreement between the requestor and NEIC.

Project plans (draft or final) for activities related to administrative/civil enforcement cases will usually be transmitted by an Assistant Director or the Deputy Director [Table 2]. the project coordinator numbers draft copies in red ink and maintains a record showing who received draft copies and when such copies were returned. The project coordinator should have all draft copies returned. Changes and modifications desired by the requestor should be communicated to the project coordinator who will assure that all affected parties are apprised of the requested changes and provided an opportunity to respond. Once all concerned parties agree to the project plan, it serves as a reference document for the project. The plan is subject to change as circumstances warrant and should contain a statement to that effect. Any change(s) should be documented and appropriate parties notified.

Because of the greater sensitivity associated with criminal investigations, the distribution and review of planning documents will be limited. Transmittal external to the Office of Enforcement, of any technical document prepared by NEIC for a criminal investigation, must be by the Chief, Enforcement Specialist Office.

PROJECT PLAN IMPLEMENTATION

Project activities include legal and technical information searches, facility inspections, process and pollution control technology evaluations, sampling, monitoring, laboratory analyses, laboratory evaluations and analytical data reviews. To the extent possible, these activities are conducted following established NEIC techniques and standard operating procedures, EPA policy and program guidance and promulgated regulations. When new methods or modifications to existing procedures are appropriate, these changes will be documented.

Each team member must assure that all work is conducted safely and that required safety equipment is used. All participants must adhere to the applicable safety requirements.

Because the information generated during an investigation can be subjected to close scrutiny during subsequent negotiations and/or litigation, procedures ensuring the integrity and security of all evidence must be followed throughout any project. See Part III, Evidence Management.

REPORT PREPARATION

NEIC prepares various reports in carrying out its enforcement program responsibilities. These reports include field trip reports, status or progress reports, technical memoranda, and enforcement investigation reports all of which detail the who, what, where, when, and how of the enforcement activity. NEIC reports can be used by Regional and Headquarters offices, other law enforcement organizations, the U.S. Department of Justice and U.S. Attorneys to support enforcement actions. Other reports prepared by NEIC include internal procedures and operating manuals, technical reports and papers (e.g.,

a report on an NEIC-developed laboratory procedure or field investigation technique). Report format, including the color of the cover, should be in accordance with the NEIC Report Services Operating Procedures Manual.

Enforcement reports are prepared by the appropriate individual or project team members. All participants in the report preparation process must assure that their individual contributions to the report and other documents are accurate, fully supportable, and commensurate with Agency and NEIC policies. Although the overall responsibility for preparation and content of the reports (including all supporting documents) rests with the project coordinator, all team members must accept responsibility for the quality, accuracy, and admissibility of the information in the final report.

Reports are reviewed internally prior to distribution in either draft or final form outside of NEIC. The NEIC reviewers can include the team members and others directly involved in the project and report preparation process, as well as appropriate Assistant Directors and their Branch Chiefs, the Deputy Director and the Chief, Enforcement Specialist Office. External review drafts should be transmitted according to Table 2. All external review drafts will be numbered in red ink and stamped on the cover page with the following statement: DRAFT REPORT - FOR AGENCY REVIEW ONLY, DO NOT DUPLICATE. All other pages of the draft will also be marked DRAFT.

Reports prepared for criminal investigations will receive limited distribution. Any draft or final report prepared by NEIC for a criminal investigation which must be sent external to the Office of Enforcement will be transmitted by the Chief, Enforcement Specialist Office.

Copies of NEIC civil enforcement reports are maintained by the library. NEIC reports may receive public distribution through the National Technical

Information Service (NTIS). Their availability to the public is announced through the NTIS publication "Government Reports Announcement," and a fee is set by NTIS for their reproduction and distribution in either paper or microfiche form.

External distribution of enforcement reports not available through NTIS must be authorized through the Chief, Enforcement Specialist Office who will consult with the project coordinator and the appropriate EPA Office of Regional Counsel.

Distribution is also restricted for reports that contain confidential business information. Under several environmental laws, including TSCA, businesses may claim certain information given to EPA to be confidential business information. When a report contains confidential business information, the title page and every page containing that information is marked "CONFIDENTIAL."

All reports containing confidential information will be kept in secure areas until restrictions are removed. Questions concerning the availability of reports should be directed to the Enforcement Specialist Office.

ENFORCEMENT CASE SUPPORT

Completion and transmittal of a report does not signify the end of NEIC involvement in an investigation. When the initial assistance activity leads to an enforcement action, NEIC staff are available to:

- Participate in the preparation of the enforcement case and in subsequent legal proceedings
- Assist in negotiations

- Provide further technical consultation and assistance (e.g., additional field work, as necessary)

As necessary, NEIC personnel are available to serve as witnesses (fact and expert) and to provide technical and legal assistance to government attorneys before and during depositions, pretrial hearings, and trials.

The project coordinator is responsible for tracking any enforcement action planned or being taken by the requesting party. In conjunction with the Enforcement Specialist Office, this individual is also responsible for identifying and offering any other support NEIC can provide.

III. EVIDENCE MANAGEMENT

SAMPLE CONTROL

A sample is one type of physical evidence collected during an investigation. An essential part of all NEIC enforcement investigations is accounting for the evidence gathered. To ensure the integrity of the evidence, the following sample identification and chain-of-custody procedures have been established. The use of alternative procedures must be documented.

Sample Identification

When *in-situ* measurements are made, the data are recorded directly into logbooks or are electronically recorded, with identifying information (project code, station number, station location, date, time, and samplers); field observations; and remarks. Examples of *in-situ* measurements include pH, temperature, conductivity, flow measurement, continuous air monitoring, and stack gas analysis.

Samples, other than *in-situ* measurements, are identified by a sample tag or other appropriate identification. These samples are removed and transported from the sampling location to a laboratory or other location for analysis. Whenever a sample is separated into portions to be provided to another party, each portion is identified by a sample tag marked "split." In a similar fashion, tags will be marked for "Blank" or "Replicate" samples. The information recorded on the sample tag includes:

- Project code (a three-alpha-numeric digit assigned by NEIC)
- Project name

- Station location (description)
- Station number (usually a two-digit code)
- Date
- Time
- Samplers' signatures
- Remarks (the samplers record pertinent information including preservatives used)

After collection, the samples are maintained in accordance with the chain-of-custody procedures discussed below.

Blank, uniquely numbered sample tags, logbooks, and other accountable documents are provided by the Evidence Audit Unit.

Split Samples

NEIC policy is that sample splits will be offered to facility officials whenever samples are collected during a civil investigation. Section 3007(a)(2) of the Resource Conservation and Recovery Act (RCRA) states "...If the officer, employee or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator or agent-in-charge a receipt describing the samples obtained and if requested a portion of each such sample equal in volume or weight to the portion retained." Section 104 of CERCLA contains similar requirements. Samples may also be split with other government agencies. Whether split samples should be collected or given to facility personnel in a criminal investigation is a decision to be made by the EPA Special Agent assigned to the case and the prosecuting attorney (e.g., Assistant U.S. Attorney).

When samples are split, a separate Receipt for Samples form [Figures 2 and 3] is prepared for those samples and marked to indicate with whom the samples are being split. The person relinquishing the split samples to the facility or agency should request the signature of the party or his representative acknowledging receipt of the samples. If a representative is unavailable or refuses to sign, this is noted in the "Received by" space. When splits are offered but refused, such refusal should be documented on the Receipt for Samples form or in the logbook or elsewhere.

Chain-of-Custody for Samples

Due to the evidentiary nature of samples collected during enforcement investigations, possession must be traceable from the time the samples are collected until they or the data derived from the samples are introduced as evidence in legal proceedings. To maintain and document sample possession, chain-of-custody procedures are followed.

Sample Custody

All samples collected as evidence are to be maintained under secure conditions and documented chain-of-custody procedures. In general, as few people as possible should be a part of the chain-of-custody. A sample is under custody if:

- It is in your possession
- It is in your view, after being in your possession
- You secured the sample in an appropriate container and made arrangements to transport it to the laboratory
- You transferred the sample to authorized personnel
- It is held in a secure area

NATIONAL ENFORCEMENT INVESTIGATIONS CENTER
Building 53, Box 25227, Denver Federal Center
Denver, Colorado 80225

FIGURE 2 - RECEIPT FOR SAMPLES

[illegible]

Distribution Original to Coordinator Field Files, Copy to Facility

N	3151
---	------

NATIONAL ENFORCEMENT INVESTIGATIONS CENTER
Building 53, Box 25227, Denver Federal Center
Denver, Colorado 80225

[illegible]

N 2405

FIGURE 3 - COMPLETED RECEIPT FOR SAMPLES

Transfer of Custody and Shipment

- Samples are accompanied by a Chain-of-Custody record [Figure 4]. When transferring the possession of samples, the individuals relinquishing and receiving will sign, date, and note the time on the record. This record documents sample custody transfer. Figure 5 illustrates a completed Chain-of-Custody record.
- Samples will be packaged properly* for shipment and dispatched to the appropriate laboratory for analysis, with a separate Chain-of-Custody record accompanying each shipment. Shipping containers will be padlocked or otherwise sealed for shipment to the laboratory.
- All shipments should be accompanied by the completed Chain-of-Custody record. The original record will accompany the shipment, and a copy will be retained by the project coordinator.
- Freight bills, post office receipts, and Bills of Lading must be retained as part of the permanent documentation.** If samples can be sent by mail (not those samples suspected of containing hazardous materials), the package should be registered with return receipt requested.

Laboratory Custody

- Laboratories at NEIC are locked at all times. Access is limited to authorized personnel and accompanied visitors.
- Laboratory personnel accept custody of the shipped samples and verify that the information on the sample tags matches that on the Chain-of-Custody record. Pertinent information as to shipment, pickup, courier, etc., is entered in the "Remarks" section. The laboratory recipient of the samples assures that all samples are transferred to the proper analyst or stored in the appropriate secure area.

* See NEIC Standard Operating Procedures for Packaging, Marking, Labeling, and Shipping of Samples (DOT requirements).

** Copies of the bills and receipts may be provided to the NEIC Office of Planning and Management to ensure proper payment. Originals of these documents are retained for the project file.

CHAIN OF CUSTODY RECORD

[illegible]

FIGURE 4 - CHAIN-OF-CUSTODY RECORD

NATIONAL ENFORCEMENT INVESTIGATION CENTER
Building 53 Box 25227 Denver Federal Center
Denver, Colorado 80225

PROJ NO		PROJECT NAME		CHAIN OF CUSTODY RECORD		NO OF CONTAINERS		REMARKS / TAG NUMBERS	
31-B		Tom's Recycling		SAMPLERS: (Signature) <i>Liz Jordan</i> <i>Jim Beam</i>					
STA NO	DATE	TIME	COMP	GRAB	STATION LOCATION	NO	OF	CON	TAINERS
01	2/6/90	1028	✓	✓	Soil Sample	2	✓	✓	✓
02	2/6/90	1045	✓	✓	Water from pool	3	✓	✓	✓
03	2/6/90	1115	✓	✓	Drum Sample	2	✓	✓	✓
						N1300-1301 / F002 Solvents N1302, N1303, N1304 N1305-1306 / pH < 2			
Relinquished by (Signature) <i>Jim Beam</i>			Date / Time 2/6/90 1434		Received by (Signature) <i>Nick Claude</i>			Date / Time 2/7/90 1023	
Relinquished by (Signature)			Date / Time		Received by (Signature)			Date / Time	
Relinquished by (Signature)			Date / Time		Received for Laboratory by (Signature)			Remarks Shipped Federal Express	

Distribution: Original Accompanying Statement Copy to Commandant Field Log

N 4264

FIGURE 5 - COMPLETED CHAIN-OF-CUSTODY RECORD

- The laboratory will use the sample tag number, sample station number, or assign a unique laboratory number to identify each sample.
- Laboratory personnel are responsible for the care and custody of samples from the time they are received until the sample is exhausted or while it is in storage.
- Each Laboratory Services branch will follow a system for tracking samples through the laboratory and identifying the documents generated during the analysis of those samples. Each employee must understand the Standard Operating Procedures applicable to his/her respective branch.
- After sample analyses and necessary quality assurance checks have been completed, the remaining portion of the sample will be kept secured as evidence until disposal is authorized, as described below. All identifying tags, data sheets, and laboratory records must be retained as part of the permanent documentation unless they are contaminated. If records are contaminated they can be enclosed in plastic and copied before being disposed of as hazardous waste.
- The Assistant Director, Laboratory Services, in coordination with the Chief, Enforcement Specialist Office, and the project coordinator will authorize disposal of samples and remaining sample portions for all administrative/civil investigations. For criminal investigations, the Assistant Director, Laboratory Services, will contact the EPA Criminal Investigations Division or other appropriate offices (e.g., FBI, DOJ) to coordinate the disposal of samples collected in support of criminal investigations.

DOCUMENT CONTROL

The goals of document control are: (1) to assure that all documents generated or obtained by NEIC personnel will be accounted for when the project is completed, and (2) to prevent premature or inadvertent disclosure of information. This program includes a serialized document system, a document inventory procedure, and an evidentiary filing system, operated and controlled by the Evidence Audit Unit (EAU). The Document Control Officer (DCO)

maintains separate locked files for confidential business information. The protocol for the transmittal of documents generated during an enforcement investigation is, in large part, implemented and monitored by the Enforcement Specialist Office [Table 2].

To provide document accountability for technical investigations, each of the document categories discussed below features a unique serialized number assigned by EAU for each item within the category. Accountable documents used or generated by NEIC employees include logbooks, sample tags, graphs, Chain-of-Custody forms, Receipt for Samples forms, and bench sheets. The project coordinator disposes of any unused serialized documents or may return them to EAU. Unless prohibited by weather, waterproof ink should be used to record all data. When weather conditions prohibit use of waterproof ink, entries should be made using a nonsmear lead pencil (e.g., 2H or 3H).

Project Logbooks

The project coordinator is responsible for the transfer of logbooks to field team members. Each person signs their logbook upon receipt and records all information pertinent to the project in that logbook. A separate logbook is used for each project.

Logbook entries should be dated, legible, and contain an accurate, factual, and complete account of the investigation. Because the logbook is the basis for the later written reports, it must contain only facts and observations. Language should be objective, factual, and free of the inspector's personal feelings, characterizations, speculation, or other terminology which is inappropriate. Entries made by individuals other than the person to whom the logbook was assigned must be dated and signed by the individual making the entry.

All project logbooks are the property of NEIC and are to be returned by the project coordinator to the Evidence Audit Unit when a project has been concluded. Representatives of facilities being inspected shall not be permitted to copy or review logbook notes.*

Sample Tags

Serialized sample tags are used to identify samples. After the tag has been completed, it is attached to a sample. Transfer to another individual is by use of a Receipt for Samples form [Figures 2 and 3]. Sample tags contaminated with a hazardous substance will not be saved. The serial number of the contaminated tag must be noted in the appropriate logbook and the project coordinator notified. All information from contaminated tags is recorded and the tags are photocopied, if possible, and disposed of. At the completion of the field activities, all unused tags (including those damaged or voided) must be returned to the project coordinator for disposal or returned to EAU.

Chain-of-Custody Records

Serialized Chain-of-Custody Records are distributed in a manner similar to that used for sample tags. When samples are transferred to laboratory personnel, the recipient, after signing, files it in a secure place. When dispatching samples via common carrier, the original accompanies the shipment and is signed by the receiving laboratory personnel. Employees of common carriers do not sign the Chain-of-Custody form.

* *As appropriate, the inspector may copy document and/or photograph logs for facility representatives.*

When samples are split with the source or another government agency, this is documented on a Receipt for Samples form. The tag serial numbers from all splits are recorded on the form and a copy of the form is provided for the source or agency. The white originals are returned to the project coordinator.

Lidar Magnetic Tapes

Lidar data are recorded on the on-board computer. This computer is used to analyze data and print results in report format. After analysis the data are archived to a magnetic tape and maintained as an evidence record.

Laboratory Records

The instrument logbooks, bench sheets, and the analyst's personal notebook(s) must contain information sufficient to recall and describe each step of the analysis performed. Sufficient detail also is necessary to enable others to reconstruct the procedures followed should the original analyst be unavailable for testimony. Any irregularities observed during the testing process need to be noted. If, in the technical judgment of the analyst, it is necessary to modify a particular method to perform an analysis, the modification must be justified and properly documented.

The numbered laboratory notebook assigned to an individual can be used for more than one project; however, only one project should be discussed on each page. That page must be labeled with the project code, dated, and signed by the individual.

Where applicable, a numbered instrument logbook is used to record information relating to calibration and maintenance of a particular laboratory instrument.

In addition to information documenting the analyses performed, field analysts should document in their project logbooks, in their laboratory notebooks, or on bench sheets the date and calibration results for mobile laboratory equipment. A record is also kept of any incidents (e.g., the disruption of electrical service to the laboratory, tampering with government vehicles or equipment, etc.). Appropriate notations regarding visitors to the mobile laboratory, such as facility personnel, are entered in the logbook.

Photographs

When photographs or videotapes are taken which show aspects of an investigation, descriptions of those photographs or videotapes are entered in a logbook. Identifying information (e.g., photographer, date, time, site location, etc.) is normally entered into the logbook as photos (or groups of photos) are taken. the photographer is not required to record the aperture settings and shutter speeds for photographs taken within the normal automatic exposure range. Special lenses, films, filters, or other image enhancement techniques must be noted in the logbook, if they could distort or misrepresent what is depicted in the photographs. Logbook notations and other documentation used to account for film processing must be maintained. Once developed, the slides or photographic prints are identified to correspond with the logbook descriptions.

Corrections to Documentation

If an error is made on an accountable document assigned to one individual, that individual may make contemporaneous corrections simply by drawing a line through the error, initialing it, and entering the correct information. Any subsequent error discovered should be corrected by the person who made the entry, the person who discovered the error, or another person familiar with the work. All subsequent corrections must be initialed and dated.

If a sample tag is separated from a sample and lost in shipment, or a tag was never prepared for a sample, or a properly tagged sample was not transferred with a formal NEIC Chain-of-Custody Record, a written statement should be prepared detailing how, when, and to whom the sample was collected, air-dispatched, or hand-transferred. The statement should include all pertinent information, such as entries in field logbooks regarding the sample, whether the sample was in the sample collector's physical possession, or in a locked compartment until hand-transferred to the laboratory, etc. Copies of the statement are distributed to the project coordinator and the appropriate branch project files.

Consistency of Documentation

Each branch or division assembles its documents and cross-checks information on corresponding sample tags, custody records, bench sheets, analyst notebooks and other logbooks to ensure that data pertaining to each particular sample is complete and consistent throughout the record. The file should be arranged according to the procedures described in this manual under "Evidentiary File." The project coordinator concurrently performs a cross-check of field documents (logbooks, custody records, etc.) to ensure that the field

information is complete. The laboratory similarly reviews their documentation for completeness. The EAU will review files after these have been transferred to EAU. Criminal case files are inventoried and numbered at the time of file assembly by the EAU or the respective NEIC Branches/Divisions involved in the case.

Branch/Division Files

After a Branch has completed its work for a particular investigation, all documents generated from that project should be assembled in the branch or Division file. Individuals may retain clean (no handwritten comments) copies of documents for their personal files but only after personally verifying that the original or similar copy is in the file. Each project coordinator is responsible for assuring the collection and assembly of all documents relative to a project at the time the project objectives are completed. The technical investigation portion of criminal case files is numbered, inventoried, and transferred to EAU for storage. Any record leaving the file after it has been transferred to EAU must be signed out.

Evidentiary Files

When NEIC has completed the project objectives, all inventoried Branch and Division file documents are reviewed and submitted to EAU, as specified above. The evidentiary file should be organized into the following document classes in this sequence.

- Privileged or confidential information
- Project plan
- Sampling documentation

- Sample tags
- Chain-of-Custody records
- Receipt for Samples form
- Laboratory records (logbooks, bench sheets, etc.)
- Project correspondence
- Documents obtained from facilities being investigated
- Background information
- Report notes, calculations, etc.
- Photos, maps, and drawings
- Final report(s)
- Litigation/settlement documents
- Other documents, as appropriate

Once deposited in the evidentiary file, documents may only be checked out through the EAU document control personnel.

Litigation Documents

Any litigation reports, letters, memoranda, draft court documents, etc., from the Enforcement Specialist Office or other government attorney which discuss legal matters or strategies should be separately identified in individual Branch and Division files. These documents should be marked to identify the privileged nature of their contents. Internal distribution is limited to the appropriate project participants and their supervisors.

Confidential Business Information

Some information requested and obtained by NEIC may contain trade secrets which companies may request be guarded as confidential business information (CBI). In general, NEIC employees who have a need to know may have access to CBI. When CBI is obtained, NEIC employees must follow specific requirements to protect the information. The regulations to be complied with by every employee are at 40 CFR Part 2, Subpart B. Those

requirements vary with the particular law involved. If in doubt regarding the requirements governing the handling of documents identified as "confidential" or "trade secrets," employees should consult the Enforcement Specialist Office.

Of particular importance are the provisions of Section 14 of the Toxic Substances Control Act (TSCA). A company may make confidentiality claims for any and all information provided to the Agency with the condition that specific criteria under TSCA are met. Once confidentiality under TSCA is claimed, stringent procedures are followed to maintain the confidentiality of that information. Refer to the TSCA Confidential Business Information Security Manual, U.S. EPA, Office of Toxic Substances (approved November 1, 1985), for guidance. Before obtaining access to any CBI protected under TSCA, every person must obtain TSCA CBI clearance through the EAU.

All analytical work conducted on confidential samples will be performed in a manner to preserve the confidentiality of the information generated. The resulting documentation will be isolated from the Branch or Division files when the records are called in by EAU.

EVIDENCE AUDIT

The Evidence Audit Unit (EAU) provides a continuing evaluation of enforcement investigation activities. This evaluation addresses sample control, document control, chain-of-custody, file assembly, and evidence security.

Some projects may be selected for an audit. The audit may include an evaluation of sampling, sample custody, data recording, and any supporting documentation.

For administrative/civil investigations and the technical portions of criminal investigations, EAU requires submission of all records for inclusion in the evidentiary file at the completion of a project. These files are reviewed to assure that all documents generated or obtained during the course of the investigation are present. Any discrepancies are brought to the attention of the project coordinator and the Chief, Enforcement Specialist Office.

QUALITY ASSURANCE

A Quality Assurance (QA) program is established at NEIC to assure that data produced are of known and documented quality. QA program requirements cover all measurement activities performed, supported, or required by NEIC. The authority and responsibility for directing QA activities within NEIC are delegated to the QA Officer (QAO). QA direction and guidance are specified in the NEIC QA Program Plan.

The Quality Assurance Officer's responsibilities include development, evaluation, and documentation of QA policies and procedures at NEIC. The QAO is assisted by QA division representatives in implementing and coordinating the QA program. All employees involved in sampling or measurement activities are responsible for carrying out quality assurance requirements in accordance with the QA Program Plan and any NEIC standard operating procedure, and for informing the QAO or QA coordinators of the need for corrective actions.

The QAO develops and conducts system audits to monitor the QA program and the quality of data produced.

APPENDIX
WITNESS GUIDELINES

WITNESS GUIDELINES

The following suggestions are made for prospective witnesses in order to lessen the fears and apprehensions which almost everyone has when first testifying before a board, commission, hearing officer, or in court. Even those who have testified previously encounter a certain anxiety when called for a repeat performance. When a witness is properly prepared, both with regard to the subject matter of testimony and conduct on the witness stand, there should be little fear about testifying.

It is of utmost importance that the witness be thoroughly prepared on the subject matter of the testimony. Only the witness can recall what occurred in the field and/or laboratory and why. Since many cases are tried substantially after the field and laboratory activities have been conducted, it is imperative that adequate documentation be originally prepared in order that a witness' memory may be refreshed. A thorough and detailed review of all relevant documents is the only way prospective witnesses can be adequately prepared.

In order to assist witnesses on how they should conduct themselves, the following suggestions are given.

The witness will be required to take an oath to tell the truth. The important point is to remember that there are two ways to tell the truth - one is a halting, stumbling, hesitant manner, which makes the trier of fact (the hearing officer, judge, or jury) doubt that the witness is telling all the facts in a truthful way. The other way is in a confident, straightforward manner, which inspires faith in what is being said. It is most important that the witness testify credibly. To assist a witness in testifying in such a manner, a list of time-proven hints and aids are provided below.

GENERAL INSTRUCTIONS FOR A WITNESS

If you are to be a witness in a case involving testimony concerning the appearance of an object, place, condition, etc., try to refresh your recollection by again inspecting the object, place, condition, field notes, and records, etc., before the hearing or trial. While making such inspection, close your eyes and try to picture the item and recall, if you can, the important points of your testimony. Repeat this until you have thoroughly familiarized yourself with the features of your testimony that will be given.

Before you testify, visit a courtroom trial or administrative hearing and listen to other witnesses testifying. This will make you familiar with such surroundings and help you understand some of the things you will come up against when you testify. You should consider being present at the hearing of the matter in which you are to testify in sufficient time to hear other witnesses testify before you take the witness chair. This, however, may not always be

possible since, on occasion, witnesses are excluded from the courtroom until they testify.

A good witness listens to the question and then answers calmly and directly in a sincere manner. The facts should be well known so they can be communicated. Testimony in this manner applies to cross-examination as well as direct examination.

Wear neat, clean clothes when you are to testify. Dress conservatively. Do not chew gum while testifying or taking an oath. Speak clearly and do not mumble.

DIRECT EXAMINATION

In a discussion on administrative procedures, E. Barrett Prettyman, retired Chief Judge, U.S. Court of Appeals for the District of Columbia, gave the following advice:

"The best form of oral testimony is a series of short, accurate and complete statements of fact. Again it is to be emphasized that the testimony will be read by the finder of the facts, and that he will draw his findings from what he reads. Confused, discursive, incomplete statements of fact do not yield satisfactory findings."

Stand upright when taking the oath. Pay attention and say "I do" clearly. Do not slouch in the witness chair.

Do not memorize what you are going to say as a witness. If you have prepared answers to possible questions, by all means do not memorize such answers. It is, however, very important that you familiarize yourself as much as possible with the facts about which you will be called upon to testify.

During your direct examination, you may elaborate and respond more fully than is advisable on cross-examination. However, when you elaborate, do not ramble and do not stray from the main point raised by the lawyer's question. The taking of testimony is a dialogue, not a monologue. If your testimony concerns a specialized technical area, the court or hearing officer will find it easier to understand if it is presented in the form of short answers to a logical progression of questions. In addition, by letting the lawyer control the direction of your testimony, you will avoid making remarks which are legally objectionable or tactically unwise.

Be serious at all times. Avoid laughing and talking about the case in the halls, restrooms, or any place in the building where the hearing or trial is being held.

While testifying, look at the judge, hearing officer, or jury most of the time, and speak frankly and openly as you would to any friend or neighbor. Do not cover your mouth with your hand. Speak clearly and loudly enough so that anyone in the hearing room or courtroom can hear you easily. At all times, make certain that the reporter taking the verbatim record of your testimony is able to hear you and record what you actually say. The case will be decided entirely on the words that are finally reported as having been the testimony given at the hearing or trial. Always make sure that you give a complete statement in a complete sentence. Half statements or incomplete sentences may convey your thought in the context of the hearing, but may be unintelligible when read from the cold record many months later.

CROSS-EXAMINATION

Concerning cross-examination, Judge Prettyman gives the following advice to prospective witnesses.

"Don't argue. Don't fence. Don't guess. Don't make wisecracks. Don't take sides. Don't get irritated. Think first, then speak. If you do not know the answer, but have an opinion or belief on the subject based on information, say exactly that and let the hearing officer decide whether you shall or shall not give such information as you have. If a 'yes' or 'no' answer to a question is demanded but you think that a qualification should be made to any such answer, give the 'yes' or 'no' and at once request permission to explain your answer. Don't worry about the effect an answer may have. Don't worry about being bulldozed or embarrassed; counsel will protect you. If you know the answer to a question, state it as precisely and succinctly as you can. The best protection against extensive cross-examination is to be brief, absolutely accurate, and entirely calm."

Unless you are testifying as an expert, the hearing officer or judge will permit only testimony, based upon direct knowledge, as to the facts. You usually will not be allowed to testify about what someone else has told you (hearsay), and will not be allowed to provide your opinions or conclusions.

Always be polite, even to the attorney for the opposing party.

Do not be a smart aleck or cocky witness. This will cost you your credibility and the respect of the trier of the facts in the case.

Do not exaggerate or embroider your testimony.

Stop instantly when the judge or hearing officer interrupts, or when the other attorney objects to what you say. Do not try to "sneak" your answers into the record.

Do not nod your head for a "yes" or "no" answer. Speak out clearly. The reporter must hear an answer to record it.

If the question is about distances or time and your answer is only an estimate, be certain that you say it is only an estimate.

Listen carefully to the question asked of you. No matter how nice the other attorney may seem on cross-examination, he may be trying to hurt you as a witness. Understand the question. Have it repeated if necessary; then give a thoughtful, considered answer. Do not give a snap answer without thinking. You cannot be rushed into answering, although, of course, it would look bad to take so much time on each question that the judge, hearing officer, or jury would think that you are making up the answers.

Answer the question that is asked, not the question that you think the examiner (particularly the cross-examiner) intended to ask. The printed record shows only the question asked, not what was in the examiner's mind, and a nonresponsive answer may be very detrimental to your side's case. This situation exists when the witness thinks "I know what he is after, but he hasn't asked for it." Answer only what is asked.

Explain your answers, if necessary. This is better than a simple "yes" or "no." Give an answer in your own words. If a question cannot be answered truthfully with a "yes" or "no," you have a right to explain the answer.

Answer directly and simply the question asked you and then stop. Never volunteer information.

If by chance your answer was wrong, correct it immediately; if your answer was not clear, clarify it immediately.

You are sworn to tell the truth. Tell it. Every material truth should be readily admitted, even if not to the advantage of the party for whom you are testifying. Do not stop to figure out whether your answer will help or hurt your side. Just answer the question to the best of your ability.

Give positive, definite answers when at all possible. Avoid saying "I think," "I believe," "in my opinion." If you do not know, say so. Do not make up an answer. You can be positive about the important things which you naturally would remember. If asked about little details which a person naturally would not remember, it is best to say that you do not remember.

Do not act nervous. Avoid mannerisms which will make it appear that you are scared, not telling the truth, or all that you know.

Above all, it is most important you do not lose your temper. Testifying at length is tiring. It causes fatigue. You will recognize fatigue by certain

symptoms: (a) tiredness, (b) crossness, (c) nervousness, (d) anger, (e) careless answers, (f) willingness to say anything or answer any questions in order to leave the witness stand. When you feel these symptoms, recognize them and strive to overcome fatigue. Remember that some attorneys, on cross-examination, are trying to wear you out so you will lose your temper and say things that are not correct, or that will hurt you or your testimony. Do not let this happen.

If you do not want to answer a question, do not ask the judge or hearing officer whether you must answer it. If it is an improper question, your attorney will object for you. Do not ask the presiding officer, judge, or board member for advice.

Do not look at your attorney or at the judge or hearing officer for help in answering a question. You are on your own. If the question is an improper one, your attorney will object. If the judge or hearing officer then says to answer it, do so.

Do not hedge or argue with the opposing attorney.

There are several questions which are known as "trick" questions. That is, if you answer them the way the opposing attorney hopes you will, he can make your answer sound bad. Here are two of them.

1. "Have you talked to anybody about this matter?" If you say "no," the hearing officer or judge, or a seasoned jury, will know that is not true because good lawyers always talk to the witnesses before they testify. If you say "yes," the lawyer may try to imply that you were told what to say. The best thing to say is that you have talked to the attorney and that you were just asked what the facts were and to testify truthfully.
2. "Are you getting paid to testify in this matter?" The lawyer asking this hopes your answer will be "yes," thereby implying that you are being paid to say what your side wants you to say. Your answer should be something like, "No, I am not getting paid to testify; I am on salary and there is no other compensation for my time beyond the reimbursement for my travel."