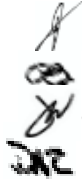


TCEQ Interoffice Memorandum

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Date: December 14, 2018

Subject: Revised FOSOP Investigation Guidance Document

Brief Description of Issue

The above listed Regional Directors and staff were requested to form a workgroup to review and update the Field Operations Standard Operating Procedures (FOSOP) document which was last updated on April 7, 2015.

Background

The FOSOP document was in need of updating to remove hyperlinks, update exit interview guidance, add guidance for confidential information and redaction, and incorporate language from the Strategic Equipment Plan related to equipment training.

Options and Considerations

This document provides guidance and information for investigation standard operating procedures for regional office staff and is used by investigators and management in all programs. Once approved, this document will be posted to FODWEB and distributed to regional staff.

Committee Recommended Option and Distribution

The workgroup recommends approval of the revised FOSOP document.

Feedback to the Committee

- The recommendation is accepted as proposed.
- The recommendation is accepted with the following modifications. Comments:
Click here to enter text.
- The recommendation is being returned for further consideration. Comments: Click here to enter text.

FIELD OPERATIONS STANDARD OPERATING PROCEDURES

INVESTIGATION GUIDANCE

Revised December 14, 2018

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Investigation Guidance

1.0 Introduction

Investigators are skilled field professionals who represent the TCEQ dealing with industry, local governments, small businesses, and the public. Investigators are responsible for conducting investigations in a professional manner that reflects favorably on them and the TCEQ. Their primary responsibility is to determine the Regulated Entity's (RE) compliance with TCEQ regulatory requirements.

Investigators are expected to be thoroughly familiar with the legal basis for their actions. Investigators must be knowledgeable with respect to applicable TCEQ rules, state statutes, permit requirements, and the Code of Federal Regulations.

As a representative of the TCEQ, the investigator is often the initial or only contact between the TCEQ and the regulated community. When dealing with entity representatives and employees, investigators must be professional, tactful, courteous, and diplomatic.

1.1 Categories of Activities and Investigation Types

Investigations are the systematic evaluation of a RE in accordance with established protocols. Investigations are performed for a variety of purposes, which can be generally characterized as mandatory, on-demand, and discretionary activities.

Mandatory activities are required to meet a commitment for investigation type and frequency. Targeting of mandatory activities is based on the minimum number of activities required to satisfy the applicable commitment. Examples include investigations pursuant to EPA Compliance Monitoring Strategies.

On-demand activities are triggered by an input from a customer where a response is expected or required by statute, rule, policy, or other documented agreement. Examples include complaint investigations, review of emissions events, NOV record review investigations, and response to spills of hazardous materials.

Discretionary activities are performed at regional management discretion, not pursuant to a mandatory commitment or initiated by an on-demand trigger. While these investigations count for performance measures, the performance measures are not site/facility specific. Examples include reconnaissance investigations, focused investigations, and other investigations initiated because of legislative and/or community interest.

Most investigations have common tasks conducted during three distinct phases: pre-investigation, investigation and post investigation. Investigation reports must be finalized in a timely manner in order for investigation findings to become public record, to bring an entity back into compliance more quickly if violations are found, and to meet the annual performance efficiency measure of 35 days average from investigation to report completion.

The three CCEDS investigation types are Compliance Investigation, Site Assessment, and Agent Evaluation. Information regarding specific investigation activities can be found in the CCEDS Workplan Definitions document. Additional information regarding investigation procedures can be found in the program-specific investigation manuals.

1.2 Investigation Efficiency

Staff should always schedule investigations in consideration of utilizing state resources in an efficient and cost-effective manner. With regional management approval, investigators can strategically plan their investigations in a manner that will allow them to conduct multiple investigations within a single day or overnight trip. Staff should consider completing multiple investigations when there is multiple REs operated by the same responsible party to save travel/coordination time and efforts.

Examples include: conducting a PWS and WQ investigation within the same city or multiple petroleum storage tank (PST) investigations that are operated by the same company within one geographic area.

It may be possible for staff to conduct a discretionary activity along with an on-demand activity when time permits. For example, when conducting a complaint investigation, it may be feasible to also conduct a focused activity to address specific issues at a site.

Additionally, staff should utilize available tools to strategically identify multiple REs of the same type and in the same area that utilize the same equipment, checklists or expertise. These strategies would enable investigators to develop a travel and/or routing plan and to organize a review of the RE's documents prior to conducting the investigations. Coordination between regional management and the investigator is essential in order to determine the most appropriate use of these options to increase investigation efficiency. These strategies are able to be utilized more frequently when staff are trained in more than one program.

Workplan Business Processes

Every investigation report will have one or more investigation activity types associated to the report. Some investigation activities can be combined in one investigation report, but some cannot. Those report workplan codes which cannot be combined are identified within the workplan definitions document. A determination should be made on which workplan activity types are appropriate.

1.3 Combination of Workplan Activities

Investigation activity types that fall within the scope of the primary investigation activity, a.k.a. cascading activities, should not be combined with the primary investigation.

Investigation activity types that assess compliance with standard(s) outside of the scope of the

primary investigation activity may be combined with the primary investigation in efforts to enhance efficiencies.

While appropriateness of investigation combinations is site specific contingent upon regulated activities assessed during the investigation, there are potentially appropriate combinations. Some acceptable examples include:

- a. Wastewater comprehensive compliance investigations (CCIs) with the wastewater treatment facility relative to 210 authorization (WW210FOC) investigation, wastewater treatment facility in-house laboratory focused (WWIHLFC) investigation, or Stormwater investigation activities;
- b. IHW compliance evaluation investigations (IHW CEIs) and used oil investigation activities;
- c. Municipal solid waste compliance evaluation investigations (MSW CEIs) and Stormwater investigation activities; and
- d. Comprehensive investigations and complaint investigations

Investigations that utilize handheld monitoring equipment (e.g., items on the CCEDS equipment checklist) or which address a narrow set of rules (e.g., nuisance odor) should document the use of the equipment on available checklists and staff should not add or combine additional workplan activities just to incorporate the use of the equipment or narrow set of rules. One example of an inappropriate combination would be combining an odor investigation (FIAIRODOR) with a complaint investigation. Another inappropriate combination includes adding workplan events that reflect independent sampling activities (e.g., IHW sampling (IHWSP)) to workplan events which already incorporate sampling activities into the existing workplan definitions/codes (e.g., IHW compliance monitoring evaluation (IHCME)). More information on workplan codes and definitions can be found on OCE's ShareNet page by searching for the *Workplan Activity Definitions* for the fiscal year of interest (e.g., *FY17 Workplan Activity Definitions*).

1.4 Use of Multiple Workplan Activity Events

Unless pre-established in the workplan activity definitions, use of multiple activity events (e.g., multiple events for the same workplan event code) will typically not be allowed.

Use of multiple activity events for activities not established as appropriate in the workplan definitions will require pre-approval by the RD.

The RDs will work with the Program Support Section (PSS) to establish processes to ensure communication and consistency among regions, including development of standard reports and routine discussion during RD meetings.

1.5 Use of Focused Investigations

Performance of up to two focused investigation activities with scopes applicable to the same standard(s) is allowable. Performance of more than two focused investigation activities with scopes applicable to the same standard(s) will result in the investigation being done as a

comprehensive investigation. Exceptions must be pre-approved by the RD.

1.6 Use of Segmented Investigations

If an RE is very large, has numerous emission points or has multiple permits that must be evaluated for compliance, these can be divided up into segmented investigations where only a portion of the facility will be inspected, or a limited number of permits will be reviewed during a single investigation.

Each RD will identify large facilities (i.e., Amarillo model and/or air model) where performance of segmented investigations is appropriate. Identification of facilities for segmented investigations will be uncommon.

The RD will inform their Area Director (AD) which facilities are proposed to be targeted for segmented investigations by submitting a list which contains all the identified facilities, the proposed segmented investigation strategy, and a succinct description as to why the facility should be investigated in segments.

The ADs and RDs will periodically, at least annually, review facilities identified for segmented investigations to determine if the reasons for the segmented investigation approach are still valid (e.g., a facility with one Title V permit splits into five separate Title V permits).

1.7 Exceptions Requiring the Pre-Approval of the Regional Director

Where these business rules allow for an RD to approve an exception to the Workplan Business Process, the RD may first seek peer review from the other RDs before approving an exception. Continuous opportunities will exist for this process to occur via standing agenda items at quarterly RD face-to-face meetings and monthly RD conference calls. If immediate action is necessary that does not allow for the peer review process, an RD should consult with their AD for guidance on how to proceed.

Exceptions will be formally documented in memorandum format from the Section Manager (SM) to the RD and requires the signature of the RD. The memorandum should adequately and succinctly discuss why the exception is needed. For short-term exceptions and when warranted, the memorandum should include an end-date.

Periodically, the RDs will use standing meeting opportunities (e.g., quarterly face-to-face or monthly calls) to review any exceptions on file. The RDs will consider if any exceptions need to be adopted into the workplan standards. The RDs will also consider if any exceptions need to be discontinued. The ADs will conduct a similar process.

Approved exceptions will be stored in a location maintained by PSS that is accessible to all the regions as a mechanism to review previously approved exceptions across the state.

1.8 Creation of New Workplan Activities

The RDs, SMs or relevant programmatic committee may identify a need for or be asked to develop new workplan activities. New workplan activities may also be required based on new or changing legislative requirements or goals. New workplan activities must be approved through the Steering Committee process. New workplan activities should be designed in consideration of current Legislative Budget Board (LBB) and EPA compliance monitoring strategy (CMS) goals and commitments, in particular focused investigations which may help contribute to CMS commitments. In most cases, a checklist outlining the scope of each investigation should be created by the programmatic committee and approved by the Steering Committee before any new type of investigation occurs.

Investigation Types

1.9 Compliance

A compliance investigation is a category of investigation with the primary purpose of evaluating compliance with established rules, regulations, statutes, and permit requirements at a specific site. Investigations can either be in the form of an on-site investigation or an in-house record review investigation. The investigation may be conducted by TCEQ staff or a TCEQ contractor. This category of investigation can result in enforcement actions and can affect an RE's compliance history rating.

1.10 Site Assessment

A site assessment investigation is a category of investigation with the primary purpose of characterizing site conditions related to an authorization request; characterizing a site in relation to an established standard; or aiding in the establishment of a standard. Because of pending permit applications, these investigations, once completed, should be finalized as soon as practicable since the purpose is mainly an informational assessment. The investigation can be conducted on-site or consist of an in-house review of plans, specifications, or permit applications. This category of investigation does not result in enforcement actions and the investigation type entered on the Consolidated Compliance and Enforcement Data System (CCEDS) report should be Site Assessment. Observations made during a site assessment, however, have the potential to result in the discovery of compliance issues. Where appropriate, the investigation type may need to be changed to a Compliance Investigation. If a compliance investigation cannot be conducted at that time, then a separate investigation should be created and/or conducted to address the compliance-related issues. The combination of workplan activities and investigation types is further discussed in Section 1.3 of this document.

If an RE has an "Unsatisfactory" performer classification, their permit renewal or amendment may be denied, modified or amended. For more information about how compliance history is used, see 30 TAC § 60.3.

Examples of site assessment investigations include:

Ambient Condition Assessments - Surface Water Quality Monitoring (SWQM).

Authorization-related Assessments:

- Permit Request for Comments;
- Emissions Evaluator (EE) Pre-test Meeting;
- Review of Edwards Aquifer Water Quality Protection Program (EAPP) Applications;
- Site Evaluation for a Water Quality (WQ) Permit or Registration;
- Receiving Water Assessment (RWA);
- Review of Industrial and Hazardous Waste (IHW) Closure Plans;
- Review of On Site Sewage Facilities (OSSF) Applications; and
- Review of Temporary Water Rights applications.
- Review of Notice of Intent (NOI) to Recycle applications

1.11 Agent Evaluation

An agent evaluation investigation is a category of investigation with the primary purpose of reviewing the performance of an RE delegated authority to administer a program over which the TCEQ has jurisdiction. This type of investigation includes an on-site investigation, as well as a records review.

Currently, the only type of Agent Evaluation conducted by regional staff is the OSSF Comprehensive Reviews of Authorized Agents.

2.0 Pre-Investigation

A properly conducted pre-investigation ensures an investigator is prepared and knowledgeable about the facility and applicable rules and provides good customer service to the RE. When applicable, as much work as possible should be completed prior to an on-site investigation. Pre-investigation should include:

- Researching related RE information (Customer legal name, previous investigations, compliance history, complaints, and correspondence (if any));
- Determining applicable regulatory requirements;
- Scheduling the investigation (*if appropriate – see Section 2.3 below*);
- Gathering all relevant investigation checklists and publications;
- CCEDS preparation;
- Determining sampling requirements;
- Determining on-site safety requirements;
- Reserving a vehicle;
- Gathering and preparing or checking out equipment;
- Requesting documentation or making the RE aware of what documentation will be needed prior to or during an investigation; and
- If there are questions about permit requirements, contact the appropriate permit division: Air, Water or Waste.

Additionally, the investigator should review specific program policy and investigation techniques identified in program investigator manuals.

2.1 Research Related RE Information

The investigator should determine applicable site-specific requirements, and review history based on current authorizations (permits, registrations, contracts, licenses, delegations, etc.). This includes identifying specific requirements for processes, operations, and record keeping for known site activities. Other helpful information includes:

- When previous investigations were conducted, and the results of those investigations;
- Status of open/active violations since the last investigation;
- Site location, process diagrams, photographs, and maps;
- Site environmental and technical contacts;
- Site-specific record keeping requirements or operating parameters;
- Self-reporting documents (annual reports, discharge reports, etc.);
- Previous investigation reports;
- Appropriate Customer(s) to be identified in investigation report;
- Site authorizations (permits, registrations, certifications, etc.);
- Technical documentation and background for the type of RE;
- Documentation to support noncompliance issues;
- Information from other TCEQ programs or divisions;
- Commission Orders, Compliance Agreements, EPA Orders, and EPA Consent Decrees; and
- Permit applications.

A review of available information about the RE is essential to planning and conducting an investigation. Most of the information that is needed can be obtained through the various standardized reports.

A compliance history report contains information regarding the RE Number (RN) and Customer Number (CN), known site authorizations, past investigations, Notices of Violation (NOVs) and Enforcement Agreed Orders (AO) with basic violation information.

Other sources of information include the Secretary of State (SOS) database, county appraisal districts, CLEAR investigative tool (previously known as Westlaw), and internet searches. Contact regional management about the appropriate use of the CLEAR resource.

This information will be useful in developing the General Facility and Process Information and Background headers required in the body of the CCEDS Report to be completed during the Post Investigation phase of the investigation.

2.2 Determine Applicable Regulatory Requirements

The investigator should identify the applicable compliance parameters based on regulatory requirements for the type of investigation to be conducted (Federal and State statutes, TCEQ rules

and regulations, permits, authorizations, policy, guidance, etc.). This information will also help determine which checklists to associate with the investigation.

2.3 Scheduling the Investigation

Investigations may require scheduling or coordination with an RE. Prior to scheduling an investigation, a determination must be made regarding whether or not advance notification is appropriate. Advance notification of routine compliance investigations ensures proper RE personnel and records will be available at the time of the investigation.

Exceptions to advance notification include:

- Complaint investigations (unless necessary to gain consent for access);
- Investigations of REs with an "Unsatisfactory" compliance history classification;
- Where there is reason to believe the site is intentionally violating regulations;
- The RE is alleged to be a repeat offender;
- Enforcement follow-up investigations;
- Investigations of used car lots for pollution control equipment;
- Emergency Response (ER) incidents; and
- Other investigations determined by region management.

In cases where advance notification is appropriate, the investigator should provide between 1 and 14 calendar days advance notice to the RE prior to conducting the scheduled investigation. Situations where the notice will exceed 14 days should be discussed and approved by the investigator's supervisor.

Focused investigations generally require 24 to 48 hours notification with the exception of those for REs with an "Unsatisfactory" Compliance History Status, Air Odor Surveys (FI AIR ODOR) and Air General Monitoring (FI AIR MON) investigations or as determined by management.

Compliance history requirements can be found in 30 TAC § 60. To determine a RE's compliance history classification, run the Compliance History Report in Business Objects Enterprise (BOE).

The investigator should initially contact the RE by telephone; however, other methods may be used. At the time of contact, the investigator should set the date, time, location and approximate duration of the investigation. The investigator should also discuss the following:

- Nature of the investigation;
- Records or personnel that should be readily available;
- Records that should be sent to the investigator prior to the on-site portion of the investigation;
- Discrepancies or pertinent questions to be considered during the investigation;
- Directions to the site; and
- Site-specific safety protocols, recommended personal protective equipment (PPE), photograph and/or sampling requirements.

2.4 Gather all relevant checklists and publications

Checklists may be found in CCEDS, generated from BOE, in the program specific Investigator Manuals, on the program specific webpage on the Field Operations Documents website (FODWeb) or on the TCEQ's public website (by searching for "Investigation checklist"). Each region maintains a supply of publications which can become part of the investigation and outreach.

Publications (some of which are also available in Spanish) such as the following Regulatory Guidance (RG) and General Information (GI) are recommended to keep on hand include:

- RG 344: "The TCEQ Has Inspected Your Business. What Does this Mean to You?"
- GI 278: "Do You Want to Make an Environmental Complaint? Do you Have Information or Evidence?"
- GI 032: "Obtaining TCEQ Rules"
- GI 355: "E Services"
- RG 456: "I Received a Field Citation. What Happens Next?"
- GI 354: "Finding Rules and Rulemaking Information on the TCEQ Web Site"
- GI 202: "Get Help from the TCEQ"
- Media-Specific guidance or forms

Additional publications can be found within the Publications page of TCEQ's public website.

2.5 CCEDS Preparation

For scheduled compliance investigations, CCEDS input will usually begin during the pre-investigation preparation; however, it is not required. Investigators may refer to the CCEDS Manual on FODWeb under Programs, CCEDS/Crystal, and CCEDS Documents.

2.6 Agency Issued Electronic Devices

When electronic devices are used, follow the programmatic and user directions. Electronic devices can include:

- Digital cameras
- Smart phones
- GPS systems
- Monitoring equipment

2.7 Determine Sampling Requirements

Under normal circumstances, it is known prior to the investigation whether sampling will be conducted. However, occasionally it will become evident that sampling is necessary once the

investigation has started. Where possible, be prepared to conduct sampling as applicable since the conditions may no longer exist if a return visit has to occur for sample collection.

Sampling is performed to determine compliance with regulatory, permit, or authorization limitations, site performance, site characteristics, or operations, and for enforcement case development. Some examples include:

- Routine wastewater effluent sampling for comparison with permit limits.
- Sample collection of VOCs in ambient air using passivated stainless-steel canisters.
- Stream sampling when the investigator believes that a discharge may affect surface water quality.
- To determine the general waste category of a material.
- To document source of contamination (for example, tape lift samples from painting operations).
- When required as part of an investigation (for example, groundwater investigations).
- Continued sampling as part of an enforcement action.
- To document a spill or release from a facility.

Sampling is conducted in accordance with established sampling and safety protocols, which can include a media- or site- or permit-specific Quality Assurance Project Plan (QAPP). Failure to follow proper sampling protocols may compromise sample validity. For more information about sampling and safety protocols, refer to the program investigator manuals and safety committee guidance respectively. Please refer to specific program requirements on FODWeb.

Once sampling requirements have been determined, the investigator should gather appropriate PPE and sampling equipment and make transportation and laboratory analysis arrangements. In addition to the TCEQ's Sugar Land Laboratory and Monitoring Division's Air Laboratory in Austin, several outside labs are under contract with the agency. Consult with region management to determine the appropriate lab for analysis.

The commission may accept environmental testing laboratory data and analyses for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions *only* if the data and analyses are prepared by an environmental testing laboratory accredited by the commission under 30 TAC Ch. 25, except as provided in 30 TAC §25.6.

2.8 Determine On-Site Safety Requirements

OCE is committed to providing safe working conditions for the staff. This objective is accomplished by providing PPE, safety protocols, training, and annual health monitoring. Approved safety protocols are developed by the statewide safety committee and can be viewed on the FODWeb under Programs, Safety, and Safety Documents.

All RE and TCEQ safety requirements should be observed. Investigators should be able to recognize potential safety hazards. No investigation should be performed unless the investigator has the proper safety equipment and necessary training to use the equipment. Although the

investigator's supervisor is responsible for ensuring proper training in safety procedures and the use of equipment, the responsibility for the investigator's safety is ultimately his/her own.

Although investigators cannot anticipate every safety hazard that may be encountered during an investigation, precautions must be taken to prevent illness or injury to self, other workers, and the public. Prior to an investigation, investigators should review any unique hazards associated with the site(s). Program investigator manuals identify many unique hazards associated with specific types of investigations. If advance notification of an investigation was given to the RE, the investigators should discuss with the RE any potential safety hazards and the appropriate PPE to take as well as any requirements to be completed upon arrival at the facility (e.g., safety video).

The Professional Development Plans (PDPs) currently require Occupational Safety and Health Administration (OSHA), 29 Code of Federal Regulations (CFR) Section 1910.120 40-hour certification and current 8-hour refresher training for all program investigators. In addition, the supervisor can utilize the Strategic Equipment Plan requirements to ensure proper training. Refer to the program specific PDPs for additional information.

2.9 Equipment

The investigator should obtain and/or reserve/sign-out, if required, equipment to complete the investigation:

- Gather required safety equipment. Inspect the equipment for proper condition and operation.
- Gather other support equipment (for example, cameras, video cameras, binoculars, measuring tape, Global Positioning System (GPS) equipment, etc.).
- Gather sampling equipment.
- Calibrate field sampling equipment, as outlined in the standard operation procedures (SOP) for the specific piece of equipment prior to use and review/update calibration logs as needed.
- Inspect the vehicle(s) for proper condition and operation.

Training and documentation of worker proficiency are required before the use of FO equipment is allowed. For more information regarding training for equipment, refer to Section 5.12 entitled "Supported Equipment Training Plan" in this FO SOP guidance.

2.10 Equipment Maintenance and Calibration

Equipment users, assigned staff or contractors are responsible for cleaning, calibration, and preventive maintenance of equipment. Check your region office requirements for additional responsibilities. These services will be conducted in accordance with the manufacturer's specified recommendations and written SOPs.

Field equipment such as pH meters, dissolved oxygen (DO) meters, explosimeters, Photoionization Detectors (PID), Flame Ionization Detectors (FID), and other field sampling equipment must be calibrated prior to and/or after use or as directed by sampling guidance

documents. Only approved standards or equipment will be used. Documentation of the standard's certification, lot number, or other method of traceability will be maintained by the investigator. Equipment SOPs containing calibration and maintenance information are located on FODWeb under Programs/Equipment.

2.11 Reserving a Vehicle

Each TCEQ Regional Office has established procedures for reserving and managing their vehicles. Follow region established procedures.

All staff driving state vehicles must be familiar with and adhere to the requirements in OPP 3.09 Agency Vehicle Fleet Management.

3.0 Investigation

Be prepared and knowledgeable about the site and any records reviewed in the pre-investigation in order to be aware of the process and where issues may exist. General guidelines for conducting investigations are:

- Be professional and courteous at all times;
- Arrive on time and with all appropriate equipment and investigation materials;
- Show TCEQ credentials;
- Be alert to potential safety, weather and/or other scheduling problems;
- Be aware of other environmental problems that may require subsequent investigation by other staff;
- Ask questions or investigate any area of the site which is significant to the investigation purpose;
- Do not allow the RE representative to direct the pace of investigation, or prevent investigator contact with operators and technicians. Investigate areas of interest (for example, drainage pathways, diversion ditches, creeks, etc.) even if the RE representative attempts to take other routes;
- Check site map, if available, in order to stay properly oriented; and
- Comply with site and TCEQ safety requirements.

Specific technical procedures associated with investigations are provided in each of the program investigator manuals.

3.1 Arrival at the Site

Investigations should always be conducted at the agreed-upon scheduled time and conducted at reasonable times, usually defined by TCEQ or RE operating hours. Investigations that cannot be completed by the normal close of business may be continued with the consent of region management and the RE.

When an investigator arrives at the site they should present their TCEQ identification card, allow site representatives to review the identification, and then state the purpose of the investigation, often referred to as the entrance interview. In some cases, additional identification may be necessary prior to or at the time of arrival (examples are: visitor passes, site safety cards, etc.). Entry into the site should be documented with date, time, and name of the site personnel encountered.

Some REs may provide a signature sheet or a visitor's log which can be signed by the investigator, provided that the document does not compromise the investigation or limit the RE's environmental liability. **An investigator should never sign liability waivers, general confidentiality agreements, or statements of non-disclosure.** Should a conflict result from the refusal to sign, the investigator should contact region management for additional guidance. Region management may consult with the Office of Legal Services.

Refer to program investigator manuals for some specific pre-entrance activities, such as "perimeter site surveillance."

3.2 Obtain Access to Investigate the Site

The primary authority to conduct investigations is contained in the Texas Water Code § 26.014 for the water program, Texas Health and Safety Code (THSC) § 382.015 for the air program and THSC § 361.032 for the waste program.

These sections grant authority to an investigator to enter a site at any reasonable time for the purpose of investigating conditions relating to compliance with state and federal rules as well as access to records. The statutes have some exclusions to general authority (for example, the Texas Health and Safety Code § 382.015 excludes entering private residences).

If at any time an investigator feels unsafe, they should leave the area and discuss their concerns with region management. The investigator should never attempt to make any forceful or unlawful entry into a site. Do not open gates or jump fences to gain access to a property.

In most cases, site entry will not be a problem, and the RE will give consent to investigate the site. The investigator should be aware that consent may be withdrawn at any time. Any segment of the investigation completed before the withdrawal of consent remains valid. Withdrawal of consent is equivalent to a "denial of entry." Keep in mind that consent to site entry is not required for an investigator to observe or report on activities in plain view.

If an investigator is denied entry into a site, the following steps should be followed:

- Maintain a professional, courteous, and cooperative attitude;
- Ask for the reason for denial of entry;
- Re-explain the purpose of the investigation and describe the statutory provisions authorizing entry to the site (summarized on the back of the TCEQ ID card); and
- Under no circumstances discuss potential penalties or do anything which may be interpreted as threatening.

If entry continues to be denied:

- Leave the site;
- Document observations made pertaining to the denial, including date, time, and names of site personnel encountered, and the reason for denial;
- Document potential violations, if observed; and
- Contact region management for further guidance.

At this point, the region management team should contact the Litigation Division (LD) to determine appropriate course of action. Under most circumstances, the LD will contact the RE and again discuss legal authority. If access is still denied, then the region office will process the appropriate administrative search warrant documentation in coordination with the LD.

If an investigator is unable to make contact with the RE to gain entry, no attempt should be made to trespass on the property; however, observations can be made from publicly accessible areas, such as roadways.

3.3 Entrance Interview

An entrance interview is conducted prior to conducting an investigation in order to discuss the purpose, scope, and authority of investigation, and is conducted as soon as possible after obtaining access to the site. An entrance interview is not required at abandoned, inactive, or unmanned sites, or, may be conducted by other means.

The entrance interview may cover the following steps:

- Outline investigation objectives. This will inform site officials of the purpose and scope of the investigation and may help avoid misunderstandings. The investigator should explain if the investigation is being limited to a focused investigation, including that a focused investigation may develop into additional focused investigations or into an in-depth comprehensive compliance investigation upon review and evaluation of the information obtained at the time of the investigation.
- Provide RE personnel with information about applicable Federal and State rules or regulations, including new issues which might affect the site as applicable.
- Set the order and duration of investigation. Individual tasks will vary depending on factors such as the type and size of the site, reason for investigation, alleged violations, meeting schedules (exit interview), etc. Determining the appropriate order and detail of the investigation comes from experience and pre-investigation preparation.
- Arrange for site personnel to accompany the investigator. During investigations, it may be necessary for a site representative to accompany the investigator to explain operations and answer questions.
- Inform the RE of the right to split samples, if requested. If the RE inquires about obtaining copies of sample results, inform the RE they may be obtained upon request.
- Discuss any RE site policies on photography and other documentation.
- Review safety and PPE requirements. If a safety orientation is required, it should be

completed at this time. Additionally, the investigator should ask the RE to identify any high hazard areas, emergency escape routes, or emergency signals.

- If necessary, obtain visitor or safety badges, or equipment passes that may be required during the investigation.

3.4 Investigator Observations

The investigator should not feel limited to the initial scope of an investigation. Site conditions may warrant an expansion of scope. Prior to expanding the scope of an investigation, the investigator should discuss those conditions with his/her supervisor when conditions allow (e.g., prior to the on-site activities). Investigators may amend an investigation scope during the investigation and should update management of the change upon returning to the office. Inform the entity of the investigation scope change in a timely manner as applicable. Any additional issues or potential alleged non-compliances should be documented at the time of investigation.

A physical “walk around” of a site should be conducted as part of most onsite investigations. The investigator should discuss any additional issues and/or potential violations when they are noted, giving the RE the opportunity to pose questions, ask for technical guidance, or begin to resolve the issue.

3.5 Answering Questions

The investigator should only answer questions that are within their ability and authority. If unable to answer questions, the investigator should refer questions to other TCEQ staff, provide program contacts, or find the answer and contact the RE after returning to the office. If a referral to other staff is made, it is important to contact that staff to provide them with the name of the RE and a summary of the problem.

3.6 Checklists and Worksheets

When available, these documents provide guidance to ensure pertinent areas are covered. The investigator should not be limited to questions on these documents but should use them as a guide to evaluate site operations and compliance. Checklists are a platform to begin an investigation, they are not the investigation. See program investigator manuals for program specific guidance.

3.7 Review of Site Records

Site records are required to be reviewed during most Compliance Investigations. Investigators should review site records to ensure compliance with all applicable federal and state requirements. Investigators should take special care to compare information maintained at the site to the documentation reviewed during the pre-investigation. The investigator should discuss any additional issues and/or potential violations when they are noted, giving the RE the opportunity to pose questions, ask for technical guidance, or begin to resolve alleged violations. Copies of records should be obtained, when appropriate to document possible non-compliance. Specific guidance on records review requirements can be found in the program investigator manuals.

3.8 Chain of Custody

If samples are collected during an investigation, they must be handled in accordance with approved handling and Chain of Custody (COC) procedures. See program investigator manuals for additional COC information.

The sample containers must be properly sealed, labeled, and accompanied by COC form(s) according to the program investigator manuals. COC documentation provides a permanent record of sample handling and shipping. COC procedures must be used to ensure that sample data is legally and technically defensible. If multiple investigators are involved, one member of the team may be designated to ensure COC procedures are followed. Samples should be kept in or within view, or with limited-access locked storage, until transfer of custody is complete.

3.9 Exit Interview

A verbal exit interview is required to be conducted at the close of any field investigation. The RE representative usually accompanies the investigator during the investigation and is made aware of violations as they are observed. An exit interview allows the RE representative and the investigator the opportunity to review the investigation and to discuss any violations, corrective action and compliance schedule, as appropriate.

For an in-house investigation, a verbal exit interview is only required if issues are identified. Any potential violations or concerns should be discussed and any records that were not available or not provided during the investigation should be requested. The RE should be informed that the investigation results will not be final until the investigation report has been approved.

A written exit interview form should be used in conjunction with but does not take the place of a verbal exit interview. The exit interview is required to be provided to the RE **prior** to an NOV/NOE. Written exit interviews should be provided as soon as practicable, with a goal of providing preliminary findings no later than 10 calendar days after the on-site investigation. Time of Exit Interview Form issuance may be impacted if there are specific outstanding regulatory or other complexity issues and should be discussed with direct management.

The “Description of Issue” section of the exit interview form should not be filled out prior to the investigation. A form is required if issues or potential issues were discovered or an outstanding record requests exists. A written exit interview form is not required if no issues or violations are identified.

The written exit interview form is a courtesy notification which is intended to support verbally communicated issues found during an investigation. The form presents the potential issues in a manner that is clear and concise for the RE prior to issuance of any violation notice. Additionally, it allows the RE the opportunity to immediately begin to address issues that are identified allowing the RE to return to compliance in a timely manner. The exit interview form and instructions can be found on FODWeb under Programs, All Investigations, and Guidance.

Discuss the issues described on the completed exit interview form with the RE's representatives and obtain a signature which acknowledges receipt only of the form. If the representative refuses

to sign the form explain that the signature only acknowledges receipt of the form and not agreement with the issues. If the representative still refuses to sign the form, then write “Representative Refused to Sign” in the space provided for the signature. Give the original form, signed or unsigned, to the RE's representative or provide the form by email or fax. Clearly state that the opportunity exists for the RE to request a meeting at the regional office to discuss the contents of the exit interview form if the RE so desires. Include the copy of the form as an attachment to the final investigation report.

If potential issues are identified but the investigator is unsure if these issues need to be provided on an exit interview form, it is appropriate to discuss the issues with regional management first and then send the exit interview form as soon as possible to the RE. An exit interview must be attempted to be conducted with the RE in person or by telephone prior to sending the exit interview form. (If an RE is unresponsive, a record of the attempts should be kept in the file.)

If violations are discovered after an exit interview has been conducted, another exit interview must be conducted in person or by telephone and an exit interview form or revised exit interview form should be provided.

3.10 Customer Satisfaction Surveys

Following the exit interview during a field investigation, the investigator must offer the RE's representative a Customer Satisfaction Survey (CSS) form and ask that it be completed and returned to the address provided on the form. Every region receives hard copies of the CSS form or an online version of the CSS form.

The following is proposed language to be used by the investigator when handing out the CSS form. It is not expected that this language be delivered verbatim, but that the concepts contained in it be communicated.

At TCEQ, we are constantly evaluating how we do our job in an effort to be as effective and efficient as possible. Feedback from those that interact with the agency is an important part of this evaluation. We are distributing customer surveys in an effort to seek information and suggestions, and strongly encourage you to complete the survey and send it in. Thanks for your participation.

A CSS form is not required for in-house investigations.

3.11 Field Citations

Field Citations should be used whenever appropriate. The use of field citations reduces an RE's total penalty and creates efficiencies for the agency as a whole. Preparation for a possible field citation is described in detail in the Field Citation SOP. Refer to the FODWeb Field Citation webpage for complete information.

3.12 In-House Investigations

There are numerous investigations conducted in the various program areas which may not include a site visit or pre-investigative activities. These investigations include, but are not limited to, review of compliance documentation submitted to the agency, follow-up to enforcement actions, and review of other regulatory-required reports, and may include any of the relevant tasks described in the pre-investigation (see Section 2.0) and investigation (see Section 3.0) sections of this document. No travel time should be documented in CCEDS for in-house investigations.

4.0 Post-Investigation

The post-investigation is a series of events that begin immediately after an investigator has physically left a site after an investigation.

4.1 Return/Restore Equipment

After leaving a site, all equipment including vehicles, sampling devices, and reference materials should be returned, stored in the proper location, and logged in/out as appropriate. Equipment should be regularly inspected for serviceability and repairs arranged, if necessary. PPE should be cleaned, serviced, and stored. Trash, rubbish, and disposable items should be collected prior to leaving a site and disposed of properly.

4.2 Evaluate Findings

The investigator should evaluate information and observations gathered for applicability and completeness. If additional information is required, it should be requested verbally or in writing, such as on the Exit Interview Form. When requesting records or information, the investigator should be clear about expectations related to content and deadlines. Gathering additional information may be a repetitive process, and may include multiple RE contacts, some of which might include additional site visits. All contacts should be documented in the CCEDS investigation as described in the CCEDS Online User Guide.

If compliance appears to be questionable, the investigator should resolve the uncertainty. Resolution efforts may include conducting an additional investigation, routing issues for rule applicability assessment or other such interpretation, or consulting with region management on additional alternatives.

If the investigator finds that the RE is compliant with the established regulatory requirement, the investigator should continue with the post-investigation process to finalize the investigation as soon as practicable.

If the investigator finds that the RE is not compliant with established standards, the investigator should refer to the Enforcement Guidance on the FODWeb.

As discussed in section 3.9 Exit Interview, if the investigator finds violations that were not discussed during the exit interview, he/she must notify the RE prior to issuance of the NOV/Notice of Enforcement (NOE). The investigator must document this contact in the investigation report and as directed in the CCEDS Online User Guide. Alleged violations must be included in a written NOV/NOE as determined by the Enforcement Initiation Criteria (EIC). The latest version of the EIC can be found on FODWeb under Programs, All Investigations, Enforcement, NOVs & NOEs, and EIC Revisions.

Please note that if an alleged violation of an Agreed Order, Compliance Agreement or Court Order is determined, the Enforcement Division must be contacted prior to issuance of the violation. For additional information about how to handle different scenarios for an RE with an effective order or to obtain more information about the order violation case process, please review the document available on the FODWeb titled, “A Regulated Entity with an Effective Order”, which is located under Programs, All Investigations, Enforcement, and Enforcement Approved Directives.

4.3 Documentation

The investigator should compile and enter the required information in CCEDS as directed in the CCEDS Online User Guide. The program specific documentation for each investigation can be found in the program investigator manuals.

Depending on regional capability, any supporting investigation documents (with confidential information redacted) such as lab results, photos, videos or other PDF documents, should be attached to the investigation report in CCEDS. Refer to FOD CCEDS Chapter 2 – Investigation Manual on FODWeb (under Programs, CCEDS, CCEDS/Crystal, and CCEDS Documents) for instructions on how to add documents into CCEDS (starting on page 59).

The amount of time to conduct the different components of an investigation should be reflected in CCEDS. The time should be as accurate as possible and defensible for each task where the information is requested. Information about task maintenance data entry can be found on FODWeb in a memorandum titled, “CCEDS Investigation Staff Member Task Maintenance Data Entry” found under Programs, CCEDS, CCEDS/Crystal, and CCEDS Documents.

Generally, after an investigation a letter will be sent to the RE and/or the complainant(s). Standard letter formats are available on the FODWeb found under Programs, All Investigations, Enforcement, and NOVs and NOEs.

These standard letters include, but are not limited to:

- General Compliance (GC) Letter (no alleged violations with or without Areas of Concern).
- NOV Letter (outstanding alleged violations that do not warrant formal enforcement with or without Areas of Concern).
- NOE Letter (outstanding alleged violations for which formal enforcement is being initiated).

These letters should not be issued until the investigation has been approved.

Post-investigation correspondence, including NOV, NOE, complaint letters, and general compliance letters being sent to corporations, should be addressed to the highest-ranking on-site official (typically the plant/facility manager), with copies for other corporation representatives as deemed appropriate by regional management. The Secretary of State Account for Field Operations should be used to determine whether or not the RE is a corporation. Guidance for use of the Secretary of State (SOS) Account can be found on the SOS website.

For SOS login and password, refer to a document on FODWeb titled, "Secretary of State Account for Field Operations Division" found under Programs, All Investigations, Enforcement, NOV & NOE, and Enforcement General Information.

Generally, the Investigation Package includes the following information.

- CCEDS Investigation Report;
- Enforcement Action Referral (if applicable);
- Interagency Correspondence;
- Any draft letters generated (GC, NOV, NOE);
- Documentation supporting investigation findings (checklists, correspondence, sample results, photographs/video, historically important information).
- Incident/Complaint form, if applicable.

Once the investigator completes the draft investigation report and drafts the required letter(s), the investigator should assemble the Investigation Package and submit it to the appropriate Region staff member for the "Conduct Quality Review" procedure, if required. Appropriate staff members can include the RD, SM, Team/Work Leader, or delegated investigation staff member.

4.4 Field Notes – Uses, Maintenance, and Retention

Field Notes are notes taken by the investigator at or near the time of the investigation that describe the investigator's observations, events and experiences in the field and in the office as they relate to the investigation and evaluation of compliance. They are used as the foundation for preparing the investigation report; and to assist the investigator in constructing a more detailed final report. Field notes must contain only facts and observations and the language in them should be objective, factual, and free of personal feeling, subjective conclusions or any other inappropriate terminology.

Field Notes do not include copies of forms and tables, rule text, decision flow-sheets, previous investigation reports, meeting notes or records of telephone calls. These documents are reference tools that may be useful to the investigator in conducting an investigation.

Field Operations policy issued January 30, 2004, regarding Field Notes Retention states that "while relevant information from field notes should certainly be incorporated into final reports, the credibility of objective notes is recognized as an additional form of documentation." Any information important enough to retain should be included in the investigation report.

Field notes should be maintained in the regional office in a logical manner. Field notes may be filed and maintained by the individual investigator or they may be housed in a central location that

is separate from other regional files. The mechanisms for maintaining field notes are up to each region to determine, but field notes must be retrievable for reference or supportive documentation as needed within agency guidelines for records retention.

Field notes are public record and subject to Open Records Requests. Field notes must be submitted in response to any related Open Records Request. As with any other report, confidential and proprietary information will be screened out by directive from the Office of Legal Services.

The Field Notes Procedures can be found on the FODWeb under Programs, All Investigations, and Guidance.

The Field Notes Frequently Asked Questions (FAQs) can be found on the FODWeb under Programs, All Investigations, and Guidance.

The current TCEQ records retention schedule for Field Notes is "After Completion plus five years (AC+5)", after which **they must be purged**. Special consideration for additional retention must be approved by consultation with supervision and the Office of Legal Services. The TCEQ records retention schedule for regional offices can be found on the ShareNet by searching for the "Records Retention Schedule" under Administrative Services, Information Resources, Record Management (RM) & Public Information Requests (PIR), Records Management, Retention & Disposition.

4.5 Conduct Quality Review

Quality review is more than just a check for administrative completeness. The review is also a "double check" on the investigator's application of technical and/or regulatory rules and guidance to ensure that the Investigation Package can stand alone and to ensure that the information has been entered into CCEDS correctly. Specific guidance on when quality review should be completed is available in the program investigator manuals on FODWeb.

The appropriate region staff should review the completed package to assure that the written documentation, drafted letter(s), CCEDS data entry and/or required forms have been completed according to proper protocols. The reviewing staff should complete the appropriate Quality Review Checklist in CCEDS. The level of detail to be entered into the QA checklist regarding corrections is at regional discretion. Contact region management for further guidance.

If the Investigation Package meets the minimum standards of the OCE and Programmatic Report format/content requirements, the investigation may be finalized, and the date entered in the Quality Review Checklist.

If the package does not meet the minimum standards according to the technical requirements and standards it should be documented on the Quality Review Checklist. The report should be given back to the investigator for correction. This can include something as simple as typographical errors or as complex as re-evaluation of compliance issues. Comments about required corrections can be made in the Quality Review Checklist or on any internal report tracking tool utilized during report review and quality review. Final approval of the investigation information in CCEDS should be performed only after all QA and corrections are completed.

Upon approval of the investigation report, the investigator should discard draft reports and letters according to the Regional Records Retention Schedule. If prior versions of the draft reports need to be retained for management purposes, such as for documenting performance issues, they will be considered personnel records and will follow the personnel file purge requirements.

While there is no specific time requirement for the quality review process, it is recommended that it be started as soon as practicable but no later than 14 days prior to the deadline for finalizing the investigation. Program investigator manuals may designate alternate time frames. The following list identifies investigation packages which require a quality review. If quality review is not required, follow the CCEDS Online User Guide.

Investigation Packages Requiring Quality Review:

- 100% of Enforcement Actions (report package + NOV or NOE and EAR).
- 100% of Newly Initiated Programs (up to 6 months).
- 100% of State-Funded Incidents (i.e.: PST state lead, ER clean-ups).
- 100% of Investigations conducted by New Staff (staff <1 year in program).
- Minimum of 10% of Total Investigations not mentioned above.

In addition to quality review, every investigation report must undergo supervisory review prior to report approval. Supervisory review can be delegated to a senior environmental investigator or work leader.

4.6 Finalize Investigation

Once the investigation package has met quality review requirements, it is ready to be signed, approved, copied, and distributed. When the supervisor signs and dates the investigation report, that date must match the report approval date in CCEDS. Most reports are routed to the appropriate division and/or directly to Central Records. Specific guidance for how to process final reports is available in the program investigator manuals on FODWeb. **NOTE:** All enforcement-related correspondence must be signed by the RD or designee.

No single investigation should exceed more than 14 calendar days unless extenuating circumstances dictate additional time. The on-site portion of the investigation should be completed as soon as practicable and should not exceed 14 calendar days from the first day on-site. Situations where the investigation will exceed 14 days should be discussed with and approved by the investigator's supervisor.

The Investigation Package is subject to a completion deadline. The deadline "clock" starts on the last day of the investigation and ends with the date of manager approval. Investigation data must be entered into CCEDS as soon as practicable. **All investigation reports should be approved by the 60th day after the investigation end date unless revised deadlines or extenuating circumstances dictate additional time.** If the duration of an investigation is longer than 14 days, then the report approval "clock" starts on the 14th day and the report must be approved within 60 days of this date. Please refer to the program investigator manuals for specific deadlines.

4.7 Confidentiality

The guidance below pertains to paper file hard copies. For guidance on day forward imaged series, contact the Central File Room Electronic Records Management Supervisor. Some Investigation Package information is confidential information and should not be placed in public files. Examples include:

- The Enforcement Order, Order Cover Letter and Penalty Calculation Worksheet (PCW), which are confidential until mailed to the respondent;
- Confidential business information as determined by the Office of Legal Services; and
- Complaint forms or attachments containing complainant information.

When an RE provides or sends documents they have marked as confidential, determine if the information meets the confidentiality requirements. The criteria and procedures for determining confidentiality are in Chapter 5 of the Records Management Manual, which is on the Office of Administrative Services' ShareNet page. Consult Legal Services if you are unsure about the confidentiality of any document.

When confidential information is within a document that is part of an official state record, the unaltered document must be maintained, and a redacted copy must be created for public distribution. Each Office is responsible for identifying the confidentiality of their information with the Office of Legal Services (OLS). Although the process to redact identified confidential information is determined by the Record Owner, OLS and IRD can provide guidance. The agency's general process for redacting identified confidential information can be found below:

1. Determine if the information is an Agency Confidential record (ACONF) or a Facility Confidential record (FCONF). Consult Legal Services if you are unsure about the confidentiality or classification of any document.
2. Confidential information within an unredacted official state record must be redacted prior to the record being made publicly available.
3. When a document requires redaction, a copy of the entire document must be created, redacted, and then submitted to the CFR coded as public information, while the unredacted version must be submitted to CFR coded as either Agency or Facility Confidential.
4. Appropriately code the document for filing (See Document Coding Chart, Appendix 5-B)
 1. Code each document in the upper right corner of the document;
 2. Identify (stamp) each page of the document as confidential; and
 3. Place the stamped documents in an envelope and stamp the envelope "Confidential."
5. Confidential information must not be left unattended while in the custody of an Agency staff member and when not in use must be kept in a locked file cabinet.
6. Confidential information being maintained in a program area must be placed in a separate file folder and stored in a locked file area.
7. Deliver the confidential information to the Central File Room immediately. Central Campus staff should **NOT** send confidential information through Agency Mail. Every effort to prevent confidential information from being lost needs to be taken by the agency.

Regional staff should contact the Central File Room within 3-5 days of confidential submittal to validate the information was received.

General confidential information includes:

- Information marked "Confidential," "Sensitive Personal Information (or SPI)," "Attorney-Client Privileged," "Attorney Work Product," "For Law Enforcement Use Only" or "Draft."
- Information identified as proprietary by the company (marked "confidential," or "trade secret," etc.).
- Information that tends to identify an informer/complainant who reported potential violations (name, address, phone number, unique circumstances applicable only to informer).
- Information containing an email address of a member of the public (this includes business email addresses).
- Information that includes motor vehicle records (driver's license/VIN number/vehicle registration/license plate).
- Sensitive personal information: social security number, driver's license number, or other government-issued identification number; date of birth; place of birth; mother's maiden name; financial account, financial routing, or access numbers; insurance policy numbers; fingerprints; medical information; etc.

5.0 Additional Guidance

5.1 Mentoring

Mentoring occurs when a senior or “more experienced” investigator provides guidance to another investigator during any part or all of an investigation. Mentoring time recorded in CCEDS should be as accurate as possible.

5.2 Dealing with Bribes and Gifts

All investigators should be familiar with the information related to Employee Ethics and Fraud Awareness/Prevention on the ShareNet under Legal Services, General Law Division, and Ethics. Any questions related to ethics should be discussed with your regional management. The safest policy is to accept nothing.

5.3 Dealing with Conflicts of Interest

A conflict of interest may exist whenever an investigator has a personal or private interest in a matter related to official duties and responsibilities. Investigators must avoid even the appearance of a conflict of interest because such appearance damages the integrity of the TCEQ and its employees in the eyes of the public. Therefore, all employees must be constantly aware of situations that represent or appear to represent conflicts of interest. The investigator should inform regional management of any potential conflicts of interest as soon as possible. Any questions should be directed to the General Law Division.

5.4 Public/Media Relations/Elected Officials

It is important for investigators to obtain the cooperation of the public and to develop a good working relationship. This relationship can be established best through diplomacy, tact, and persuasion. Even a hostile person should be treated with courtesy and respect. Staff should not offer opinions concerning any RE, person, other regulatory agency, company, consultant, manufacturer, or an industrial product. All information acquired in the course of duty is for official use only.

Media requests should be referred to the TCEQ Media Relations Section of Agency Communications. Media Relations is responsible for coordinating all interactions with the media and for coordinating the designation of TCEQ staff assigned to respond to particular media inquiries. All contacts with media should immediately be brought to regional management's attention. The main phone number for Media Relations is 512-239-5000.

Contact from elected officials should be brought to management's attention immediately. Intergovernmental Relations (IGR) will be notified by management or their designee. The main phone number for IGR is 512-239-3500.

The OCE Legislative Contact Guidance is located on FODWeb titled, "What do I do when a member of Legislature or their representative contacts me?" under Organizational and FO Staffing.

5.5 Disclosure of Information

All records, except those labeled confidential, are available to the public in compliance with the Texas Open Records Act. To obtain information, the public may contact the Central File Room at 512-239-2900 or they may submit an Open Records Request. Please review the Open Records Request form for additional information on the Office of Administrative Services' (OAS) ShareNet page under Information Resources, Records Management (RM) & Public Information Requests (PIR), and Public Information Requests.

Files can also be viewed at the regional offices. Consult with regional management concerning specific regional file view procedures.

5.6 Providing Lists of Registered Professionals

It is common that we are asked by representatives of REs to provide names of contractors, suppliers, and other professionals who might provide services or products to assist with compliance issues. Because of the perception of favoritism, TCEQ endorsement, kickbacks, or other unethical behavior, it is imperative that we do not recommend or "suggest" any person, company, or product. It is appropriate to provide current lists of licensed professionals where the TCEQ is the licensing agency. In cases where lists are maintained by other divisions within the TCEQ, they may be provided if they clearly show the name of the division maintaining the list, have a contact and phone number, are dated and have a disclaimer that the TCEQ in no way recommends or approves the companies and/or individuals named. The primary concern with informal lists is that they are often incomplete since there is no "official" database from which

they are compiled. Referring requesters to the local telephone directory is another alternative.

5.7 Basic Evidence Collection

All information pertinent to field activities, including sampling, must be recorded in a log or field books, checklists, photographs, maps, and/or drawings. Proper documentation and document control are crucial to enforcement actions since the government's case in a formal hearing or criminal prosecution often hinges on evidence gathered by others. Therefore, each investigator must keep detailed records of investigations, photographs and videos, and any other evidence; and thoroughly review all notes before leaving the site.

The purpose of document control is to assure that all documents for a specific project are accounted for when the project is completed. Accountable documents include items such as log books, field data records, correspondence, sample tags, graphs, chain-of-custody records, analytical records, photographs, and videos. For specific guidance, refer to the appropriate program investigator manuals on FODWeb.

TCEQ checklists/worksheets may be used in conjunction with field notes to ensure that all necessary areas of concern are reviewed during the investigation and should be used as tools for ensuring a comprehensive review. They should not be used as substitutes for narrative comment and other documentation.

Schematic maps, drawings, charts, and other graphic records can be useful in supporting violation documentation. They can provide graphic clarification of a particular site relative to the overall RE; spill or contamination parameters relative to height or size of objects; and other information that, in combination with other documentation, can produce an accurate and complete evidence package.

Maps and drawings should be simple and free of extraneous details. Basic measurements should be included to provide a scale for interpretation and compass points designating north/south/east/west should be included.

As mentioned earlier, the investigator should have maps provided either by the RE or in TCEQ files. If no maps are available, investigators are encouraged to develop information for reference and site orientation information to be utilized as investigation documentation. Information can include the following features:

- Name of site visited.
- Location in relation to primary access roads.
- Permanent landmarks (for example, roads, power lines, streams, homes).
- An approximate scale to measure size and distances as applicable (Sketches do not have to be to scale. Indicate when not to scale. Where it is to scale, include the scale).
- An arrow indicating north
- Locations of areas of interest.
- Locations of important features.

- Sizes, unit types, etc. (e.g., waste pile and dimensions or volume; impoundment, type of tank or container; process unit type – distillation column; etc.)
- Locations where photographs were taken, as applicable.
- Sample locations (matching to COC tag).
- Directions of water drainage as applicable to the investigation.
- The date and preparer's name.
- Minor observations should also be noted. For example, a small patch of dead vegetation could mark the location of a contaminated groundwater plume as applicable to the investigation.

Typically, field sketches are crudely drawn and redrawing the map provides investigators with a good opportunity to review the visit and clarify technical details.

When field observations/notes are added to documents, such as maps or diagrams, they should be included with the investigation report or maintained with the field notes.

5.8 Photographic and Digital Records

Although the camera is not a substitute for good field notes, photographs are the most accurate record of the field investigator's observations. They can be significant during future investigations, informal meetings, and hearings. Documentation of a photograph is crucial to its validity as a representation of an existing situation. Agency staff personal cell phones should not be used for documentation of investigations.

Consequently, investigators should:

- Before taking photographs, let the RE know. Cameras are not intrinsically safe, and use may not be allowed in all areas of a facility.
- When possible, provide a scale reference point such as a ruler or other object that can provide a size of what is being photographed. Do not try to get too much into each picture.
- When possible, include in a photo identifiable landmarks, such as a corner of a building.
- Date and time should be included on the photographs.

Refer to program investigator manuals on FODWeb for photo templates that are to be used when submitting the digital photographs.

Photograph and digital records that are not included as attachments for investigation reports may be filed and maintained with field notes by the individual investigator or they may be housed in a central location that is separate from other regional files. The mechanisms for maintaining these records are up to each region to determine, but these records must be retrievable for reference or supportive documentation as needed within agency guidelines for records retention.

5.9 Citizen Collected Evidence (CCE)

Citizens may collect and submit to the region offices evidence that may or may not be used to document violations. Procedures for citizens to gather and submit their own evidence are on the

agency's public website under the Public tab, Make an Environmental Complaint, and Gathering and Preserving Information and Evidence Showing a Violation.

Information about CCE is available on FODWeb. These documents can be found on the FODWeb under Programs, All Investigations, and Guidance. The following documents are related to CCE: "Citizens Collected Evidence – Acknowledgement Letter", "Citizens Collected Evidence – Affidavit of Citizens", and "Citizens Collected Evidence Memo – Retention of Citizens Collected Evidence Files." If a citizen wants to submit CCE, the investigator should notify their regional management.

The receipt of CCE should be documented in CCEDS using the programmatic Complaint Incident Checklist. Evaluate the CCE using the same protocols as you would to evaluate any evidence collected by a TCEQ investigator. CCE should be maintained as confidential (along with the complaint/incident form) until and if it becomes part of an enforcement hearing. Once received (if not anonymous), the Submission of Information Acknowledgement letter should be sent to the provider. If the CCE is used for an enforcement action referral, it should be marked as confidential and included as part of the associated case file and handled in accordance with agency filing procedures.

Information received by the TCEQ (regardless of if it meets the CCE criteria) in the form of written documentation, photographs, and video should be accepted and retained in accordance with the agency's retention schedule. However, only information that meets the criteria of CCE may be utilized to document a violation.

Staff should not take possession of other items (water or soil samples and/or any other item of unknown or undocumented origin) that do not meet CCE criteria, due to safety and disposal concerns. Staff should explain to the citizen why they cannot accept the item(s) and direct them to the information available on the TCEQ website that explains the CCE process and procedures. If a region comes into possession of items unwillingly (drop-off, through the mail, etc.), the Litigation Division should be consulted regarding the appropriate handling and disposition of the items. If it is determined that the items will not be maintained at the TCEQ, a memo should be sent to the file describing the item(s), including photographs of the item(s) and final disposition.

Information being provided anonymously or by someone on behalf of other citizens must be accompanied by an affidavit signed by the citizen who documented or collected it, or it will not meet the CCE criteria and cannot be used as evidence to document a violation.

In the event the items/information are not used to document violations, the investigator should make contact with the provider to inform them of the determination. This communication may occur via letter, email or phone and should be retained according to the agency's retention schedule. The investigator will then process the information received from the individual as a complaint, subject to applicable complaint investigation procedures.

5.10 Technical Assistance

Technical assistance is an important part of an investigator's duties. Investigators are routinely asked to provide technical assistance and information to the public, the regulated community, and

governmental agencies or officials. It is where the investigator applies regulatory and/or specialized technical knowledge to address a specific issue and/or question related to investigation activities. It also can include input towards compliance issues, permitting issues and/or rule revisions. Technical assistance activities include, but are not limited to, joint investigation activities (EPA, local governmental entities, authorized agents), assisting the regulated community with achieving environmental compliance, advising the public of proper waste disposal, answering complex regulatory questions, participating in presentations, training events, or public meetings, serving as a technical resource for legislative or legal proceedings, providing information for a media inquiry or legislative request, and evaluating innovative technologies or equipment. Technical assistance activities should be tracked for other information requests.

Following are examples of activities that should be considered technical assistance and therefore tracked. Include technical assistance provided every day as well as on assigned phone duty. Include technical assistance provided over the telephone, in person, via email or in writing. These examples are not all-inclusive but are intended to show the different types of activities that should be tracked as technical assistance for both internal and external customers.

- Answering a telephone caller's question about a media specific issue (e.g., waste disposal requirements)
- Answering a telephone caller's question about the program requirements (e.g., when to notify/register)
- Providing information to a customer on where to find information/documents or other forms
- Assisting a customer reviewing a facility file in the office
- Responding to requests for programmatically specific information for internal agency staff
- Reviewing the bankruptcy program list (BPL) to determine whether facilities listed have environmental concerns, VCP, C2, etc.
- Responding to requests for information about facilities applying for agency awards/certifications
- Responding to permitting division's request for input on permit applications, amendments or modifications and/or rules and other interpretations
- Responding to Enforcement's requests for file information/clarifications on data for a current enforcement case (not a field follow-up).

5.11 Pollution Prevention

Pollution prevention and education are important aspects of the TCEQ's mission. The effort to minimize hazardous waste, excessive emissions, or possible discharge requires cooperation between regulatory agencies and the facilities that need to accomplish hazardous waste minimization and pollution prevention. As a TCEQ representative, the investigator can be a valuable resource to the RE seeking to minimize waste or prevent pollution within a complex regulatory framework. It is appropriate for TCEQ staff to provide information on applicable regulations and laws, technologies and practices, field observations and experiences, and reported data. Referrals can also be made to the Environmental Assistance Division (EAD).

EAD provides confidential compliance assistance on air, water and waste regulations to small businesses and small local governments. They work with REs, industries and manufacturers to

implement pollution prevention, recycling and innovative environmental programs. They also educate the public and regulated community on rules and environmental issues. The main phone number for EAD is 512-239-3100. Additional information can be found on the EAD's website.

5.12 Supported Equipment Training Plan

The OCE Strategic Equipment Plan (SEP) calls for the creation of a comprehensive equipment training plan. The goal of the training plan is to develop and maintain a trained workforce capable of collecting defensible environmental data. The plan will ensure an ongoing consistent approach to training with the supported monitoring equipment. The supported equipment SOPs may be found on FODWeb under the Programs/Equipment/Equipment SOPs/SEP tab.

The TCEQ requires that prior to independently performing tasks documented in an SOP, staff must demonstrate and document their competency to perform that task or procedure. For monitoring equipment and activities, competency is demonstrated and documented using the Individual Demonstration of Capability (IDC) procedure that is outlined in each SOP. Successful IDC completion demonstrates that the trainee has the necessary skills and knowledge to independently perform successful field measurements (the quantitative determination of physical, chemical, biological, or radiological properties of a matrix by measurements made in the field) or sample collection. In some cases, a vendor may function as the trainer; however, vendor training alone does not result in IDC completion. Instrument measured concentrations are not reported by the Agency without an effective SOP. Staff may collect this data without an IDC with documented supervision.

A (Continuing Demonstration of Capability) CDC is used to demonstrate and document continuing staff competency on an existing SOP and identify areas where additional training or more stringent quality control procedures may be beneficial. CDCs are not required for all processes and where required, are described in individual SOPs. Where CDCs are not required, there will be a periodic review of state-wide use and proficiency documentation trends to help validate proper equipment usage. A vendor may function as a trainer in the CDC process; however, vendor training alone does not result in CDC completion.

IDCs and CDCs must be repeated after significant SOP changes, such as transitions to new equipment models, changes in the procedure(s), or changes to the data quality objectives (DQO). Equipment trained staff and associated training records will be periodically reviewed by the MESC and reported to Steering Committee and may also be audited by designated agency management and/ or qualified members of the MESC.

IDC Process

The IDC procedure in the SOPs must include the following.

- Prior to training, the trainee reads the SOP and documents that they have read, understood, and agree to perform the effective version of the procedure.
- The trainee observes a person with a passing IDC (trainer) demonstrate the procedure(s).

- The trainee independently and successfully performs the procedure(s) while the trainer observes.
- The trainee assembles the IDC package including the completed IDC form, generated data, and supporting documentation (such as logbook entries, spreadsheets, or field notes). Data generated by the trainee must meet the procedure(s) DQOs.
- After the IDC package is assembled, a third party (not the trainer or trainee), that may include other regional/ Agency SMEs or technically qualified persons, performs a QA review of the IDC documentation for technical accuracy and completeness prior to management approval.
- Management ensures a signed hard copy of the IDC form is retained in the functional area, and IDC completion is documented in the HRSD Training Academy database.
- Active equipment use and sample collection during field investigations, environmental assessments, planned field exercises, and/ or practical exercises are the basis for maintaining technical expertise and proficiency on monitoring equipment. OCE field staff shall document relevant survey instrument use on at least six instances per year to demonstrate and maintain technical proficiency.

CDC Process

The CDC procedure in the SOPs must include the following.

- The staff member independently and successfully performs the procedure(s) listed in the SOP.
- The staff member assembles the CDC package including the completed CDC form, generated data, and supporting documentation (such as logbook entries, spreadsheets, or field notes). Generated data must meet the procedure(s) DQOs.
- After the CDC package is assembled, a third party (not the trainer or trainee), that may include other regional/ area SMEs or technically qualified persons, performs a QA review of the CDC documentation for technical accuracy and completeness prior to management approval.
- Management ensures a signed hard copy of the CDC form is retained in the functional area, and CDC completion is documented in the HRSD Training Academy database.

The OCE SEP can be found on the FODWeb under Programs, Quality Program, and TCEQ Strategic Equipment Plan.

5.13 Participation on Advisory Committees

On occasion, TCEQ Region Offices are asked to identify staff members to participate on advisory committees, such as the Solid Waste Advisory Committee (SWAC) formed by the Councils of Governments (COGs) and Local Emergency Planning Committees (LEPCs). Regional management will assign appropriate staff to participate when necessary. As part of this participation, TCEQ Region Office staff are often asked for information and advice regarding technical issues, and they may also be involved in grant-related matters including the grant selection process. It is important, therefore, that the role of the region office staff regarding such

issues is clearly defined. The general guidelines for TCEQ region staff who either have been designated to participate on advisory committees or may otherwise attend committee meetings are as follows:

Participation of TCEQ Staff: TCEQ staff are considered ex-officio members. Members of the committees, including TCEQ's region representatives, are requested to attend meetings as often as possible and to participate in other appropriate activities.

Compliance Assistance: It is appropriate for TCEQ staff to provide input on applicable regulations and laws, technologies and practices, field observations and experiences, and reported data. Important: TCEQ staff should be careful to not speak on behalf of the TCEQ unless they are sure of the established TCEQ policy or position concerning the issue in question.

Decision Making: The TCEQ representative will serve as a non-voting member. It is not appropriate for the TCEQ staff to participate in voting, final grant selection, and other similar final decision-making activities. TCEQ staff may provide input on related topics based on specific field-related knowledge.

Regional Planning: It is appropriate for TCEQ to take part in open discussion of these matters, but such participation should be advisory in nature.