

# The Office of Criminal Enforcement, Forensics and Training Incorporated Essential Discovery Elements into Its Policies and Procedures, but Additional Training Could Improve Awareness

February 15, 2024 | Report No. 24-E-0021



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## Abbreviations

EPA	U.S. Environmental Protection Agency
OIG	Office of Inspector General
OCEFT	Office of Criminal Enforcement, Forensics and Training
U.S.C.	United States Code

## Cover Image

EPA special agent. (EPA image)

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# At a Glance

## **The Office of Criminal Enforcement, Forensics and Training Incorporated Essential Discovery Elements into Its Policies and Procedures, but Additional Training Could Improve Awareness**

### Why We Did This Evaluation

#### To accomplish this objective:

The U.S. Environmental Protection Agency Office of Inspector General conducted this evaluation to determine whether the EPA's collection, retention, and production of mandatory criminal discovery materials adhered to requirements. The U.S. Constitution's due process clauses, the *Brady* Doctrine, the Jencks Act, and the *Federal Rules of Criminal Procedure* establish requirements for the government's obligation to disclose discoverable information in criminal proceedings.

The EPA Office of Criminal Enforcement, Forensics and Training investigates environmental crimes, obtains evidence, and helps prosecutors understand the details of a case as it progresses through the federal criminal process. Prosecutors familiarize themselves with the facts of the crime and provide the defendant with copies of materials and evidence that they intend to use at trial. Similarly, the defense is required to share certain information with prosecutors. This process is known as "discovery."

#### To support these EPA mission-related efforts:

- *Compliance with the law.*
- *Operating efficiently and effectively.*

#### To address this top EPA [management challenge](#):

- *Maximizing compliance with environmental laws and regulations.*

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[List of OIG reports.](#)

### What We Found

We did not identify any specific circumstances where the EPA Office of Criminal Enforcement, Forensics and Training did not adhere to criminal discovery requirements regarding the collection, retention, and production of material. OCEFT has incorporated essential elements of discovery obligations, such as the *Brady* Doctrine, the Jencks Act, and the *Federal Rules of Criminal Procedure*, into its criminal investigations policies and procedures to facilitate required discovery disclosures.

We found that some special agents employed investigative procedures that deviated from OCEFT procedures, such as using a personal camera for investigative activities and not retaining a digital recording of a voicemail. The procedural deviations that we identified were not violations of discovery requirements; however, they present an investigative process risk that could negatively impact discovery during criminal proceedings. As such, additional training for special agents, including discovery training for newer special agents and refresher trainings on OCEFT internal policies and procedures, may improve awareness of processes and promote best practices.

**Strengthening adherence to EPA discovery policies and procedures can promote efficient and effective criminal prosecution.**

### Recommendations and Planned Agency Corrective Actions

We recommend that the assistant administrator for Enforcement and Compliance Assurance review policies and procedures to determine whether updates are needed to improve processes or include best practices. We also recommend periodic training to EPA employees who may support a prosecution team to promote awareness and adherence to discovery requirements and investigative policies and procedures. The Agency agreed with our recommendations and provided acceptable planned corrective actions with estimated completion dates. We consider the recommendations resolved with corrective actions pending. The Agency also provided technical comments, which we considered and incorporated, as appropriate.



**OFFICE OF INSPECTOR GENERAL**  
U.S. ENVIRONMENTAL PROTECTION AGENCY

February 15, 2024

**MEMORANDUM**

**SUBJECT:** The Office of Criminal Enforcement, Forensics and Training Incorporated Essential Discovery Elements into Its Policies and Procedures, but Additional Training Could Improve Awareness  
Report No. 24-E-0021

**FROM:** Sean W. O'Donnell, Inspector General *Sean W O'Donnell*

**TO:** David Uhlmann, Assistant Administrator  
Office of Enforcement and Compliance Assurance

This is our report on the subject audit conducted by the U.S. Environmental Protection Agency Office of Inspector General. The project number for this evaluation was [OSRE-FY22-0145](#). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of Enforcement and Compliance Assurance is responsible for the issues discussed in this report.

In accordance with EPA Manual 2750, your office provided acceptable planned corrective actions and estimated milestone dates in response to OIG recommendations. All recommendations are resolved with corrective actions pending, and no final response to this report is required. If you submit a response, however, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at [www.epaoig.gov](http://www.epaoig.gov).

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## Purpose

The U.S. Environmental Protection Agency Office of Inspector General [initiated](#) this evaluation to determine whether the EPA’s collection, retention, and production of mandatory criminal discovery material adhered to requirements.

### Top management challenge addressed

This evaluation addresses the following top management challenge for the Agency, as identified in OIG Report No. [24-N-0008](#), *The EPA’s Fiscal Year 2024 Top Management Challenges*, issued November 15, 2023:

- Maximizing compliance with environmental laws and regulations.

## Background

As part of its *Fiscal Year 2022–2026 EPA Strategic Plan*, the EPA states that “a robust compliance monitoring and enforcement program is necessary to ensure communities get the environmental and human health benefits intended by environmental statutes and EPA’s regulations.” The EPA Office of Enforcement and Compliance Assurance uses both civil and criminal enforcement mechanisms to hold violators of environmental laws and regulations accountable. When a person or company knowingly—or under some statutes, negligently—violates a law, the person or company faces potential criminal liability. In contrast, civil liability for environmental violations arises simply through the existence of the environmental violation. It does not take into consideration what the responsible party knew about the law or regulation it violated. Examples of criminal violations include an intentional decision to dispose or dump pollutants into a river without a permit or to not install a required air pollution control device. The EPA pursues criminal enforcement of environmental violations by conducting investigations, collecting evidence, conducting forensic analyses, and providing legal assistance in criminal prosecutions.

When the U.S. Department of Justice prosecutes a case involving the EPA, the Agency must provide the prosecutor any known exculpatory and impeachment information related to the case, as well as all witness statements related to a case, so the prosecutor can disclose certain information to the defense.<sup>1</sup> This is part of the process known as “discovery.” The requirements of the government during discovery, its discovery obligations, are met when the prosecutor produces all discoverable materials to the defense. For this evaluation, we developed working definitions of “collection,” “retention,” and “production,” as these terms relate to the EPA’s responsibility to adhere to the government’s criminal discovery requirements. Collection includes how the EPA gathers information and evidence to support criminal charges and the prosecution of these crimes. Retention includes how the EPA preserves the collected information and evidence to ensure the government can locate and access it during the discovery phase. Production includes how the EPA provides the information and evidence to the prosecutor to fulfill the government’s discovery obligations to the defense. The EPA’s production of

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<sup>1</sup> Exculpatory (*Brady*) information is that which absolves the defendant of guilt or mitigates culpability for sentencing purposes. Impeachment (*Giglio*) information is that which undermines the credibility of government witnesses. We describe each later in this report.

information to the prosecutor does not, in and of itself, satisfy discovery requirements. Discovery requirements can only be met when the government, represented by a federal prosecutor, discloses all discoverable information to the defense.

### ***Criminal Enforcement at the EPA***

Within the EPA, the Office of Criminal Enforcement, Forensics and Training, or OCEFT, within the Office of Enforcement and Compliance Assurance, investigates violations of environmental laws and provides a broad range of technical and forensic services for civil and criminal investigations and counsel on legal and policy matters. OCEFT is organized into three divisions:

- The Criminal Investigation Division is composed of special agents who are law enforcement officers. Special agents focus investigative resources on cases that involve negligent, knowing, or willful violations of federal environmental laws that often result in harm to human health or the environment. Special agents work with attorneys within the EPA, the Department of Justice, and U.S. Attorney's Offices to bring criminals to justice.
- The Legal Counsel Division provides support and guidance on all legal and policy matters affecting the criminal enforcement of environmental laws or the operations of the National Enforcement Investigations Center. Legal Counsel Division attorneys, along with EPA regional criminal enforcement counsels, provide legal services to OCEFT management and staff in areas such as environmental and criminal law, forensic science, and expert witness preparation.
- The National Enforcement Investigations Center provides forensics, science, and technical support for both criminal and civil environmental investigations.

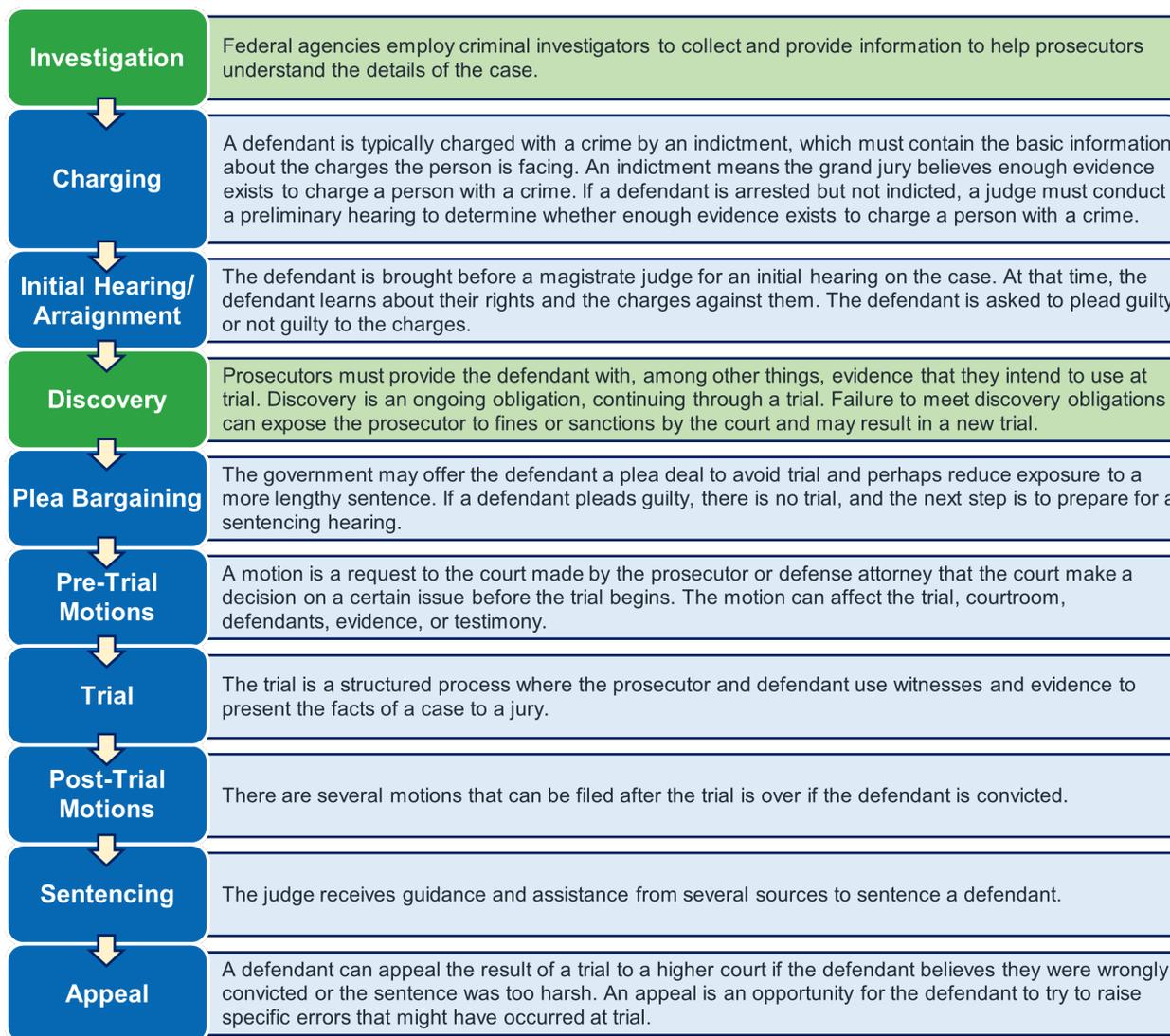
### ***Federal Criminal Process***

The federal criminal process often involves multiple federal agencies. Because multiple agencies can be involved in prosecuting a federal crime, the *U.S. Justice Manual*, which contains publicly available information on the Department of Justice's policies and procedures, refers to the "prosecution team" in its guidance. The manual states that a prosecution team can include federal, state, and local law enforcement officers and other government officials participating in the investigation and prosecution of the criminal case against the defendant.

In the context of a prosecution team, the EPA is an investigatory agency and is primarily responsible for the investigation component of the process. OCEFT special agents routinely work with attorneys at the Department of Justice, U.S. Attorney's Offices, and the EPA as integral members of the prosecution team. Special agent activities include identifying potential crimes, working with prosecutors to collect information and evidence necessary for criminal charges and trials, and testifying during legal proceedings. To adhere to the government's discovery requirements and help prosecutors fulfill their discovery obligations, EPA personnel must provide prosecutors all potentially discoverable information and items in their possession for prosecutors to determine discovery disclosure.

When the Department of Justice agrees to prosecute a case involving the EPA, it leads the prosecution team, and its prosecutors are legally responsible for ensuring discovery obligations are met during all stages of the federal criminal process. This involves assessing the cumulative impact of all information and items in the government’s possession and producing all discoverable materials to the defense. The *U.S. Justice Manual* advises prosecutors to produce discovery beyond the minimum legal requirements. Figure 1 summarizes the steps in the federal criminal process. Green highlights denote steps that fall within the scope of our evaluation.

**Figure 1: Steps in the federal criminal process\***



Source: Adapted from a Department of Justice [website](#) providing information on steps in the federal criminal process. (EPA OIG image)

\* The steps shown in green, investigation and discovery, denote steps that fall within the scope of our evaluation.

## Discovery in Criminal Cases

In federal criminal cases, the government has obligations to disclose certain information in its possession to a defendant through the discovery process. The U.S. Constitution's due process clauses, Supreme Court decisions, certain federal statutes, and the *Federal Rules of Criminal Procedure* provide the key criteria establishing the government's obligation to disclose certain information during a criminal proceeding. For example, the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution obligate the government to ensure that the defendant receives a fair trial. The *Brady* Doctrine, which encompasses a series of U.S. courts' interpretations of due process as it relates to criminal discovery, including *Brady v. Maryland*, 373 U.S. 83 (1963), which was expanded in *Giglio v. United States*, 405 U.S. 150 (1972), requires federal prosecutors to provide the defense any information and evidence in its possession that is favorable and material to the defendant's case. This includes the following:

- Exculpatory (*Brady*) information, which tends to absolve the defendant of guilt or mitigate culpability for sentencing purposes.
- Impeachment (*Giglio*) information, which undermines the credibility of government witnesses.

The obligation to disclose exculpatory and impeachment information exists regardless of whether the defense requests such information and is part of the constitutional guarantee to a fair trial.

Additionally, the Jencks Act, 18 U.S.C. § 3500, provides that the prior statements of a government witness are discoverable after that witness has testified on direct examination at trial. Upon request of the defense, the government is required to produce any government witness statements in their possession that relate generally to the witness' testimony. Rule 26.2 of the *Federal Rules of Criminal Procedure* implements the Jencks Act and sets forth procedures for applying it.

Lastly, the government must disclose to the defense, upon request, specific types of information defined in Rule 16 of the *Federal Rules of Criminal Procedure*. Some of the specific information the government is required to disclose under Rule 16, after it is requested by the defense, includes statements made by the defendant that are in the possession of the government, the defendant's criminal record, reports of any examinations and tests, and documents or other physical objects that the government intends to introduce at trial. For example, defendants may request a special agent's notes or audio recording of an interview to compare to a written summary of the same interview.

It is the duty of the prosecutor to seek all potentially discoverable material from all other members of the prosecution team. Discovery is ongoing, and a prosecutor has a continuing obligation to provide the defendant documents and other information which may impact the case. According to Department of Justice guidance, "prosecutors should always be alert to developments occurring up to and through trial of the case that may impact their discovery obligations and require disclosure of information that was previously not disclosed." A failure of the prosecutor to meet discovery obligations can expose the prosecutor to fines and sanctions by the court or may result a new trial if the prosecutor fails to provide exculpatory or impeachment information.

### Case Study: Discovery Concerns in an EPA Asbestos Case

In 2005, a company and seven of its executives were indicted for knowingly endangering the residents of Libby, Montana, through ongoing releases of asbestos related to the company's vermiculite mine. The government, for which the EPA served as the lead investigatory agency, alleged that the defendants knew that the asbestos from the vermiculite mine was deadly, that workers and community members were developing lung disease from exposure to the asbestos mined in Libby, and that people were dying from these diseases. The government further alleged that the defendants nonetheless allowed Libby residents to use the contaminated vermiculite as a base for school running tracks and the grade-school skating rink, and that they closed the mine and sold heavily contaminated properties to people who intended to live, play, and work there without telling them of the danger. During the trial in 2009, the government's case was affected by its admitted failure to disclose impeachment evidence regarding a key witness, a former employee of the defendant who worked in a variety of managerial roles over a 24-year tenure, including positions related to the Libby mine. Emails between the EPA's special agent and a government witness included witness impeachment information, but the emails were not provided to the defense until mid-trial.

Although the court found that the government's discovery violations did not rise to the level of prosecutorial misconduct, it held that the prosecutors breached their constitutional duties to disclose favorable information to the defense. As a remedy, the court allowed the defendants to cross-examine the government's witness a second time on a narrow scope of issues, prohibited the government from redirect examination, and instructed the jury that the witness returned to the stand because the government had not met its legal obligations. The jury later acquitted the defendants.

According to attorneys in OCEFT's Legal Counsel Division, this case had an impact on its operations, prompting internal review and significant resources devoted to training on the government's discovery obligations. Following this criminal trial, OCEFT developed a discovery policy, which it finalized in 2010 and updated periodically thereafter. The most recent update was in 2022.

## Responsible Offices

The Office of Enforcement and Compliance Assurance is responsible for the issues discussed in this report. The office helps to address pollution problems impacting American communities by pursuing civil and criminal enforcement actions. Within the Office of Enforcement and Compliance Assurance, OCEFT pursues criminal violators of air, water, and hazardous waste pollution laws.

The EPA's annual appropriated budget for fiscal year 2023 was roughly \$10.1 billion. The Office of Enforcement and Compliance Assurance's fiscal year 2023 budget was \$223,935,000, or approximately 2.2 percent of the EPA's total budget, and OCEFT's fiscal year 2023 budget was \$77,793,000, or about 0.8 percent of the EPA's total budget.

## Scope and Methodology

We conducted this evaluation from August 2022 to November 2023 in accordance with the *Quality Standards for Inspection and Evaluation* published in December 2020 by the Council of the Inspectors

General on Integrity and Efficiency. Those standards require that we perform the evaluation to obtain sufficient and appropriate evidence to support our findings.

We reviewed relevant laws, policies, and guidance related to the EPA's responsibilities for adhering to criminal discovery requirements, and we vetted our analysis with the OIG Office of Counsel. The documents we reviewed included:

- The due process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution.
- *Brady v. Maryland*, *Giglio v. United States*, and their progeny.
- The *Federal Rules of Criminal Procedure*, Rule 16 and Rule 26.2.
- The Jencks Act.
- The *U.S. Justice Manual*, 9-5.000 – “Issues Related to Discovery, Trials, and Other Proceedings.”

Adherence to discovery requirements for federal criminal cases ultimately rests with the Department of Justice. For this evaluation, we focused only on the aspects of criminal discovery within the EPA's control, which limited the extent to which we could assess adherence to all discovery requirements. Therefore, we focused our work on the processes that OCEFT applied within its investigations to help ensure that it met discovery requirements. This included an assessment of the controls in place and the risks that could impact the EPA's compliance with discovery requirements. To determine whether OCEFT's processes for conducting criminal investigations were consistent with the criteria identified above, we:

- Reviewed more than a dozen OCEFT policies and procedures governing the collection, retention, and production of information and evidence potentially subject to discovery. Appendix A includes a complete list of OCEFT policies and procedures that we reviewed.
- Conducted interviews with:
  - Personnel in OCEFT's Professional Integrity and Quality Assurance group.
  - The director of OCEFT's Criminal Investigation Division.
  - The director of OCEFT's Legal Counsel Division.
  - Attorneys serving as regional criminal enforcement counsel.
  - One attorney in OCEFT's Legal Counsel Division who advises on criminal cases.
  - Five special agents in the Criminal Investigation Division.
  - OCEFT's criminal litigation support coordinator.
  - The deputy chief of the Department of Justice's Environmental Crimes Section.

OCEFT identified eight closed criminal cases that went to trial between January 2016 through August 2022 and resulted in either a conviction or acquittal of the defendant. For one of the eight cases, all the special agents and attorneys that the EPA had identified as points of contact for the case had either retired or left the Agency by the time of our evaluation. For the remaining seven cases, we interviewed the five special agents, as well as six attorneys serving as regional criminal enforcement counsel, based upon their association with the OCEFT closed criminal cases. We also obtained data on

the apps available on Criminal Investigation Division special agent mobile phones to determine whether the available apps were consistent with collection and retention practices that would facilitate discovery. We did not find unauthorized communication apps on special agents' mobile phones.

## Prior Reports

There are no prior EPA OIG reports related to the EPA's adherence to criminal discovery requirements. Two reports issued by the Department of Justice OIG identified risks to federal prosecutors' ability to fulfill the government's discovery obligations. The reports are:

- *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components, Department of Justice OIG Evaluation and Inspections Division, [15-04](#), March 2015.* The Department of Justice OIG found that investigators relied on the discretion of law enforcement employees involved in the investigation, or law enforcement witnesses, to provide text messages that may have been important evidence in their investigations. Because investigators allowed law enforcement witnesses to independently determine what texts were relevant to the investigation without further oversight or review, the Department of Justice OIG concluded that there was a risk that an employee might not provide all relevant material. Additionally, the agency's inability to archive text messages presented a risk that the government may be hampered in its ability to fulfill discovery obligations.
- *Audit of the Roles and Responsibilities of the Federal Bureau of Investigation's Office of the General Counsel in National Security Matters, [22-116](#), September 2022.* The Department of Justice OIG identified instances of ineffective coordination among various branches and divisions, including in discovery matters that were the responsibility of the prosecuting attorney. The report recommended that the Office of the Deputy Attorney General evaluate guidance for areas of overlap and that the guidance clearly define and delegate the authority to the appropriate entity, especially in areas related to prosecutorial decision-making.

## Results

In the seven cases we reviewed, we did not identify any specific circumstances where OCEFT did not adhere to criminal discovery requirements. OCEFT has developed policies and procedures governing the collection, retention, and production of information and items gathered through its investigative processes that address essential elements of the government's discovery obligations. These essential elements of discovery include the government's obligation to disclose exculpatory and impeachment information. Further, OCEFT personnel indicated familiarity with key policies and procedures to help meet discovery obligations. However, in some circumstances, special agents did not have a full understanding of investigative policies and procedures, and OCEFT could enhance employee awareness through additional training and emphasis on best practices that would further reduce risks of not meeting discovery requirements.

## ***OCEFT Policies and Procedures Address Essential Elements of Discovery***

OCEFT's policies and procedures governing the collection, retention, and production of information and evidence gathered through its investigative processes incorporate essential elements of the government's discovery obligations and provide mechanisms for special agents to collect, retain, and produce potentially discoverable materials to prosecutors. OCEFT has a *Criminal Discovery* directive and a *Procedure to Implement OCEFT and DOJ Discovery Policies* that provide OCEFT's discovery policy, steps to satisfy the government's discovery obligations, and best-practice recommendations for managing potentially discoverable information. Additionally, OCEFT has policies and procedures related to the following various aspects of the investigative process that help facilitate compliance with discovery obligations, though their purposes may not be directly tied to discovery:

- Investigative process.
- Investigative reports.
- Interviews.
- Evidence handling.
- Search and seizure.
- Information technology.
- Forensic support.
- Computer and digital evidence.
- Consensual monitoring.

OCEFT's policies and procedures reference the government's legal and statutory discovery requirements, in addition to the Department of Justice's discovery policies, and remind special agents of prosecutors' responsibility to fulfill discovery obligations. For example, OCEFT's *Criminal Discovery* directive incorporates the key criteria establishing the government's discovery obligations, including the due process clause of the Fifth Amendment to the *U.S. Constitution*; case law in *Brady v. Maryland*, *Giglio v. United States*, and their progeny; Rules 16 and 26.2 of the *Federal Rules of Criminal Procedure*; and the Jencks Act. Additionally, OCEFT's *Criminal Discovery* directive advises OCEFT personnel to follow the *U.S. Justice Manual* 9-5.000 policies, which recommend producing discovery broader than the law requires. Several of OCEFT's policies and procedures have passed their review time frame, however, and reviews of these policies and procedures by OCEFT's Professional Integrity and Quality Assurance group could determine whether any revisions or updates are necessary.

The following sections address elements of OCEFT's policies and procedures related to the collection, retention, and production of criminal discovery materials.

### **Collection**

Elements of OCEFT's policies and procedures address the collection of information and evidence during criminal investigations to help the government fulfill its discovery obligations. For example, OCEFT's *Criminal Discovery* directive addresses the prevalence of electronic correspondence and communications and requires OCEFT personnel to familiarize themselves with and implement the *Justice Manual's* "Guidance on the Use, Preservation, and Disclosure of Electronic Communications in Federal Criminal Cases," and other Department of Justice guidance. Four of the five special agents we interviewed said that they frequently correspond and coordinate with the prosecution team and other involved parties to collect and retain documents and physical evidence. The *Criminal Discovery* directive states that OCEFT

employees should treat electronic correspondence the same as written correspondence, that is, being aware that a written record of potentially discoverable material is being created when communicating electronically. Additionally, OCEFT's *Information Technology Procedure* prohibits the use of available chat platforms for any substantive investigatory discussions, reducing the risk of OCEFT personnel inadvertently creating discoverable correspondence using an Agency chat platform.

#### Key terminology reminder

For the purposes of this report, our working definition of "collection" comprises the processes for developing and obtaining information and evidence relevant to an investigation. This can include the various methods and procedures used for investigative interviewing; case-related electronic correspondence; obtaining forensic, physical, and digitally recorded evidence; obtaining regulatory records; and obtaining seized, detained, or abandoned property.

All five special agents said interviewing is the most common tool they use to collect investigative information. OCEFT's *Interviews* procedure provides detailed guidance on conducting interviews, the role of the special agent, note taking, and obtaining witness statements. Additionally, the procedure provides information alerting OCEFT personnel that items such as notes taken during an interview may need to be produced in discovery.

## Retention

Elements of OCEFT's policies and procedures address the retention of potentially discoverable information and evidence, including processes for documenting, organizing, and preserving information and evidence during criminal investigations. For example, OCEFT's *Criminal Discovery* directive and *Procedure to Implement OCEFT and DOJ Discovery Policies* include guidance for cataloging information collected during investigations and storing electronic documents. OCEFT's *Investigative Reports Policy* underscores the importance of documenting investigative activities. For example, the policy states that "[a] special agent's ability to precisely record how the evidence was developed, obtained, and processed is second only to skill in obtaining evidence." The policy describes how to prepare reports to document criminal investigations and the significance of investigative reports under discovery authorities, including the *Federal Rules of Criminal Procedure*, the Jencks Act, and *Brady* Doctrine.

#### Key terminology reminder

For the purposes of this report, our working definition of "retention" comprises the processes and systems used for documenting, organizing, and preserving information and evidence in possession of the Agency for the purpose of criminal discovery. This can include the methods and procedures used for preserving case-related electronic correspondence; witness statements; physical, forensic, and digitally recorded evidence; interview notes; grand jury items; and seized, detained, or abandoned property. This can also include Agency systems or databases used for storing and managing case records.

OCEFT's *Interviews* procedure explains the importance of preserving all original interview notes for the purpose of discovery. The procedure states:

Redacted

...

... Should a witness's testimony differ from the information provided during the interview, the recollection of the Special Agent supported by his/her notes can influence the finder of fact as to the truth. Notes taken on scrap paper or in a disorganized manner do not reflect well upon the Special Agent or upon OCEFT and can harm a case.

OCEFT's *Evidence Handling* policy provides processes to receive, document, handle, and track evidence to ensure that it is properly produced during discovery and that it may be introduced as legally admissible evidence in a criminal enforcement proceeding. The policy includes retention procedures for various types of evidence commonly coming into custody, including regulatory records; physical evidence and samples; abandoned, detained, and seized property; grand jury items; weapons; and digitally recorded evidence and photographs. Further, the policy describes the importance of evidence retention processes in the context of discovery. For example, the policy advises OCEFT personnel to retain all investigative photography as evidence "because it is not possible ... to determine during the investigation which captured image may be introduced into evidence by the prosecutor."

Regarding retention of email correspondence for the purpose of discovery, OCEFT's *Information Technology Procedure* and *Procedure to Implement OCEFT and DOJ Discovery Policies* require that each substantive case-related email communication or electronic record be stored in an appropriately named email folder or a hard drive. This process of moving responsive communications into an email folder is referred to as "foldering." When a prosecutor requests applicable emails from identified OCEFT personnel as part of discovery, the *Information Technology Procedure* advises the special agent to produce the complete set of their foldered emails. When a prosecutor requests applicable emails from EPA personnel external to OCEFT, the procedure authorizes a designated OCEFT employee to provide search parameters to the EPA's e-discovery service to collect applicable emails for production to the prosecutor.

OCEFT's *Information Technology Procedure* addresses potential discovery questions for collaborative files that are created and stored with available Agency applications. The procedure designates a custodian for collaborative files created using these applications; this reduces the risk of the EPA inadvertently producing multiple draft documents to a prosecutor that may contain inconsistent information.

## Production

Elements of OCEFT's policies and procedures address the production of materials to prosecutors for the purpose of discovery. Importantly, OCEFT's *Criminal Discovery* directive stresses that special agents must

ensure that the prosecutor has access to all relevant Agency information to review for final disclosure determinations. Additionally, OCEFT's *Procedure to Implement OCEFT and DOJ Discovery Policies* provides a detailed "Discovery Checklist," which includes a series of questions that special agents and regional criminal enforcement counsel should discuss with the prosecutor to prompt them to think about all sources of potentially discoverable information. In noting that the checklist is not exhaustive and the prosecutor may decide some materials do or do not need to be collected, the procedure states that "[t]he prosecutor will also be better informed to determine whether formal written discovery instructions need to be sent to particular entities to ensure appropriate production."

#### Key terminology reminder

For the purposes of this report, our working definition of "production" comprises the processes and procedures used to (1) search for and gather potentially discoverable information and evidence in possession of the Agency for prosecutorial review and (2) physically and electronically provide criminal discovery materials to the prosecutor.

OCEFT's *Procedure to Implement OCEFT and DOJ Discovery Policies* includes processes for preparing information and producing evidence to the prosecutor. OCEFT's *Information Technology Procedure* describes the process of sending and receiving files using the EPA's secure file transfer protocol service and includes the file transfer support contact information. Furthermore, OCEFT's *Procedure to Implement OCEFT and DOJ Discovery Policies* advises special agents to consult the Criminal Investigation Division's criminal litigation support coordinator on how to stay organized, review documents, and produce documents to prosecutors. It also advises special agents to err on the side of disclosure when there is a question about discoverability of any piece of information or evidence. The procedure states that "if the employee is unsure about the discoverability of any piece of evidence or information under Rule 16 or *Brady/Giglio*, he/she should make the prosecutor aware of the information so that the prosecutor can make the ultimate legal judgment regarding its disclosure to the defendant."

Additionally, OCEFT's *Criminal Discovery* directive includes the procedure for responding to Department of Justice requests for review of OCEFT employee personnel files for impeachment, or *Giglio* information. The directive details the obligations of the witness in disclosing relevant information, as well as responsibilities for the Agency official in responding to such requests when the EPA is the lead investigatory office. The process includes identifying and gathering all relevant information for the employee-witness. Such information includes:

- Individual personnel files and the official records controlled by the EPA Office of Human Resources.
- Any files controlled by either the OIG or OCEFT in which the employee-witness is or has been the focus of an investigation or internal review.

According to the OCEFT *Criminal Discovery* directive, OCEFT's Legal Counsel Division will provide "analysis and advice" when there is uncertainty as to whether information is of potential impeachment

value. The directive goes on to state, however, that uncertainty over whether information has impeachment value “should be resolved in favor of disclosure to the requesting official.”

OCEFT policies and procedures also provide production guidance on specific types of evidence. For instance, regarding the production of investigative photography to prosecutors, OCEFT’s *Evidence Handling Policy* advises special agents to:

[C]onfer with the assigned prosecutor and [regional criminal enforcement counsel] to ensure that they are aware of any images not on a working copy that may have been previously provided to the prosecutor so they may make an informed decision as to whether to turn over the additional images. Any decisions related to discovery are to be made by the prosecutor and not the Special Agent.

### ***OCEFT Personnel Followed Processes to Help Meet Discovery Requirements, but Risks Exist***

Based on discussions with OCEFT staff and special agents, we did not identify any circumstances where OCEFT employees’ collection, retention, and production of potentially discoverable materials failed to meet discovery requirements. Moreover, information we obtained provided reasonable assurance that OCEFT personnel generally followed investigative processes to help ensure that they met discovery obligations. This included:

- Practices described by OCEFT employees and EPA regional criminal enforcement counsels.
- Internal controls incorporated into OCEFT’s investigative process.
- Anecdotal information for seven closed criminal cases in which EPA personnel served on the prosecution team.

However, we identified instances which presented risks to the EPA in meeting the government’s discovery obligations. For instance, not all special agents we interviewed were aware of OCEFT’s updated *Criminal Discovery* directive. Moreover, while all special agents considered it their duty to provide all investigative information to prosecutors to ensure compliance with discovery requirements, all special agents were not familiar with some of the specific underlying requirements that establish the government’s discovery obligations. For example, one special agent mischaracterized the meaning of “exculpatory information” during our interview.<sup>2</sup> Additionally, none of the special agents demonstrated an understanding of the specific requirements of the Jencks Act, which requires the government to produce prior statements from a witness testifying at trial.

Aside from new special agent basic investigation training, the special agents we interviewed did not identify any regular discovery training in which they participate. The special agents said that they

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<sup>2</sup> All five special agents described a duty to produce all investigatory information to a prosecutor, which would encompass exculpatory and impeachment information. However, one special agent mischaracterized the meaning of “exculpatory information” during our interview.

periodically receive discovery updates from OCEFT and regional counsel, as well as assistant U.S. attorneys. When employees are not fully aware of applicable legal requirements, or of policies and procedures that govern OCEFT's investigative process, there is risk to OCEFT's ability to successfully pursue criminal violations of environmental laws.

### Practices Described Were Generally Consistent with Investigative Process; Some Risks Identified

Four of five special agents we spoke to demonstrated an understanding of their obligations to produce exculpatory and impeachment information to prosecutors during discovery, as mandated by authorities including *Brady and Giglio*. All five special agents said that they disclose all case-related information to prosecutors regardless of potential inadmissibility of evidence. Two of the five special agents said that they may offer input on how they would characterize certain information for prosecutors, that is, identifying information as discoverable versus potentially privileged or nondiscoverable, but also said that they would not withhold any information from prosecutors based upon their characterization of the information. These two special agents said EPA attorneys may help review and characterize information prior to production to the prosecutor.

Although the determination as to what information the prosecution team deems discoverable lies with the prosecutor, one special agent reported withholding operational plans as part of production to the prosecutor on a case.<sup>3</sup> The special agent considered these plans a government work product and thus not subject to discovery. While government work products may be protected from disclosure under the *Federal Rules of Criminal Procedure*, the prosecutor has the ultimate responsibility to decide what material the prosecution team believes is discoverable. In this circumstance, the special agent did not allow the prosecutor the opportunity to determine disclosure, which creates a risk of discoverable material not being produced during a criminal proceeding.

Special agents described various ways they retain case-related information during an investigation that aligned with guidance included in OCEFT policies and procedures, as follows:

- Special agents described storing physical or documentary evidence in a secured location and tracked with chain of custody forms. Their descriptions were consistent with processes included in OCEFT's *Evidence Handling* policy.
- Special agents stated that they prepare investigative activity reports to document and memorialize criminal investigative activities and retain these reports in OCEFT's electronic case management system. Their descriptions were consistent with processes included in OCEFT's *Investigative Reports Policy*.

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<sup>3</sup> In response to our draft report, OCEFT said that "[p]rosecutors know that [operational plans] exist but do not expect them to be produced in discovery because such documents relate to safety issues surrounding law enforcement operations rather than the subject matter of the investigation." We did not verify OCEFT's position with the Department of Justice. As noted in the report, the prosecutor has the ultimate responsibility to decide what material the prosecution team believes is discoverable.

- Special agents told us that they maintain a hard-copy case file for any handwritten notes, working documents, or other documents that are not tracked with a chain of custody form or maintained in an electronic case management system. Their descriptions were consistent with processes in OCEFT's *Interviews* procedure and *Procedure to Implement OCEFT and DOJ Discovery Policies*.
- Special agents told us that they use email foldering to retain case-related email correspondence. Foldering case-related emails is a process recommended in OCEFT's *Procedure to Implement OCEFT and DOJ Discovery Policies* and *Information Technology Procedure*.

All five special agents said that they prepare investigative activity reports to document work undertaken on a case and retain the reports in OCEFT's electronic case management system. The special agents' descriptions of investigative activity report preparation were consistent with OCEFT's *Investigative Reports Policy*. These special agents said that the reports summarize all facts and results of investigative activities, attach supporting files, and document where supporting files and evidence are retained—for example, hard-copy case files, evidence room, or outside of the electronic case management system. During production to the prosecutor, all five special agents said that they download all case files and attachments from the electronic case management system and provide them to prosecutors as an external hard drive or disc. However, four of five special agents said that not all digital files can be stored in OCEFT's electronic case management system because of file size limitations. If a file is too large to attach to reports in the electronic case management system, special agents said that the file is stored in evidence, referenced in the investigative activity report, and tracked with a chain of custody form. The special agents' descriptions for handling such files were consistent with processes included in OCEFT's *Investigative Process* policy. Additionally, all five special agents demonstrated an understanding of retention procedures for case-related electronic correspondence, such as emails, text messages, and instant messages, as described in OCEFT's *Procedure to Implement OCEFT and DOJ Discovery Policies* and *Information Technology Procedure*. For example, special agents said that they retained substantive case-related email correspondence in folders and subfolders to assist prosecutors' review for discoverable information. Four of five special agents indicated to us that little-to-no case-related text messages were generated on their investigations,<sup>4</sup> and all five special agents said that they did not use instant messages for case-related communications. An attorney serving as regional criminal enforcement counsel told us that he advises special agents to avoid generating substantive information in emails, texts, or instant messages. Limiting electronic correspondence can reduce the risk of creating discoverable correspondence, which would need to be produced in discovery but may be difficult to retain.

All five special agents said that interviewing is the most common investigative tool they use to collect information and evidence during criminal investigations. All said that they retain handwritten notes

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<sup>4</sup> For one case, the special agent said that he took screenshots of case-related text messages, prepared investigative activities reports, and attached screenshots of the text messages to the investigative activity reports. This process was consistent with the best-practice recommendations for retention of electronic correspondence included in OCEFT's *Procedure to Implement OCEFT and DOJ Discovery Policies* and *Information Technology Procedure*.

from investigative interviews in their hard-copy case files. The special agents' descriptions of their practices were consistent with OCEFT's *Interviews* procedure. However, two of five special agents said that they only produce hard-copy interview notes to a prosecutor when the prosecutor specifically requests them. In some instances, information in special agent notes, or even the notes themselves, may be discoverable and require production. According to a deputy section chief at the Department of Justice, ensuring that special agents produce hard-copy notes can sometimes be a challenge in the discovery process because prosecutors may forget to request interview notes. Because the deputy chief cited this as a challenge, it may be helpful for special agents to automatically produce interview notes to prosecutors, reducing any risk of the prosecutor not being made aware of any notes containing discoverable information. Two of five special agents said that they scan and upload handwritten interview notes to OCEFT's electronic case management system. Incorporating this as standard practice may reduce the risk of inadvertently failing to produce potentially discoverable materials if a prosecutor does not request interview notes.

All five special agents described retention procedures for digitally recorded evidence that aligned with OCEFT's *Evidence Handling* policy, that is, transferring digital recordings to a "write-once" optical media, such as a CD-R or DVD-R. Additionally, four of five special agents said that they never use personal devices for investigative activities. However, two special agents described instances that were not consistent with OCEFT policies and procedures:

- One special agent reported transcribing a voicemail containing case-related information and preparing an investigative activity report with that transcription instead of creating and retaining a digital recording of the voicemail as directed in OCEFT procedures. OCEFT's *Procedure to Implement OCEFT and DOJ Discovery Policies* directs special agents to:

(1) record both the voicemail and the envelope information available on the voicemail system that provides the date and time that the voicemail was received, (2) write an [Investigative Activity Report] describing the circumstances of the voicemail and the method used to preserve it, (3) list the electronic audio file as an attachment to the [Investigative Activity Report], and (4) store the [Investigative Activity Report] and attached audio file in the appropriate file folder related to the case on the secure hard drive or official case file.

- Another special agent reported using a personal digital camera to take pictures for investigations because the special agent said it is better than what the Agency has for taking digital photographs. According to OCEFT's policy, *Evidence Handling*, "[e]very effort should be made to avoid the use of personal digital image capture devices."

The failure to preserve a digital recording of a voicemail with case-related information and the use of a personal digital camera to collect evidence introduce risks to achieving OCEFT's *Evidence Handling* policy, which is:

[T]o properly receive, document, handle and track obtained evidence to ensure that it: 1) is properly produced, if required, during the discovery phase of a criminal enforcement proceeding; 2) may be introduced as legally admissible evidence in a criminal enforcement proceeding; and 3) is properly handled or disposed of following the conclusion of a criminal investigation and/or prosecution.

## Processes Include Internal Controls to Aid Discovery; Some Risks Identified

OCEFT has established internal controls that aid in the collection, retention, and production of investigative information meeting discovery requirements. These include:

- *Supervisory review and approval.* The collection of investigative information includes steps for special agents in charge, who have supervisory responsibilities over certain investigative activities, to review and approve operational plans. Additionally, investigative activities to obtain physical evidence via a search warrant typically involve review and input from special agents in charge and regional criminal enforcement counsel, as well as approval from a prosecutor. Also, either special agents in charge or assistant special agents in charge review and approve each investigative activity report.
- *Inspections by OCEFT's Professional Integrity and Quality Assurance group.* OCEFT's Professional Integrity and Quality Assurance group is charged with ensuring that OCEFT employees, particularly law enforcement personnel and managers, adhere to the highest levels of integrity and professionalism as expected by the Agency and the public. The group's Office Inspection Program has two components: (1) Office Self Inspections, in which the office's special agent in charge assesses operations using a standard procedure and (2) Office Verification Inspections, in which the Professional Integrity and Quality Assurance group ensures the accuracy of the office self-inspection, identifies and addresses issues, and identifies best practices for dissemination across OCEFT. Four of six business functions included in the Professional Integrity and Quality Assurance group's *Office Inspection Program Manual* address elements of collection, retention, and production of criminal discovery. For instance, inspections assess adherence to OCEFT's *Criminal Discovery* directive on requests for *Giglio* review of special agents' files. The *Office Inspection Program Manual* also requires supervisors to describe how they ensure staff adhere to relevant laws, regulations, standards, and directives that govern OCEFT and Criminal Investigation Division operations. Further, inspections assess office liaison efforts with external stakeholders, such as prosecuting authorities and enforcement agencies, state and local environmental regulators and management programs, regional management, program offices, and civil enforcement programs. Proactive liaison efforts may facilitate coordination for future discovery efforts. All five special agents we interviewed said that it is their responsibility to coordinate with entities outside of OCEFT and ensure that evidence held by outside entities is produced to prosecutors. Upon completion of the inspection process, the Professional Integrity and Quality Assurance group issues a report with action items to which the special agent in charge must respond; the group then follows up on high-priority action items.

- *Regional enforcement counsel review.* OCEFT assigns a regional criminal enforcement counsel to every case to review case information and provide legal guidance to special agents during investigations. According to attorneys we spoke to, regional criminal enforcement counsel may also review information the Agency has collected to determine whether certain information may be characterized as privileged information. OCEFT's *Investigative Process* policy states that special agents should consult with the assigned regional criminal enforcement counsel throughout all stages of the investigations process. In some instances, regional criminal enforcement counsel may be appointed to practice in federal court as a special assistant U.S. attorney.
- *Past U.S. Attorney's Office experience and ongoing litigation support.* Five of six attorneys we interviewed said that they had experience as special assistant U.S. attorneys. Special assistant U.S. attorneys act as a prosecutor on a federal criminal case and, according to an EPA attorney we spoke to, are subject to Department of Justice policies and procedures, including the criminal discovery policies in the *Justice Manual*. Because several regional criminal enforcement counsel have experience in this role, they are uniquely qualified to advise OCEFT personnel on satisfying discovery requirements. Additionally, OCEFT has established a criminal litigation support coordinator role with responsibilities to aid special agents in production of information. These coordinators have an advisory role in the discovery process that, according to OCEFT's *Procedure to Implement OCEFT and DOJ Discovery Policies*, includes "advis[ing] a Special Agent on how to stay organized, review documents, and produce documents." Additionally, the criminal litigation support coordinator can aid special agents in preparing file formats for data and documents that need to be uploaded to the EPA or Department of Justice information-sharing platforms and that are then reviewed for discovery purposes.

Despite the range of internal controls OCEFT has in place, risks remain. For example, not all special agents use the resources available to them. Four of the five special agents we spoke to said that they did not consult with the criminal litigation support coordinator on the cases that we asked about.

Improvements to existing controls could further reduce risks of not meeting discovery requirements. For example, only two of the five special agents we interviewed said that they take steps to document production of case-related information to a prosecutor. One special agent reported preparing a letter to the prosecutor with a list of all files and information produced to the prosecutor for the case, and another reported preparing a disk with all electronic files produced to the prosecutor, then copying the disk for Agency documentation of what was provided to the prosecutor. While all special agents said chain of custody forms are updated to reflect physical evidence sent to a prosecutor, not all discoverable information may be tracked with chain of custody forms. For example, production of investigative activity reports, case-related email communications, and handwritten interview notes may not be documented. Without a record of what was produced to a prosecutor, the Agency may be unable to prove what it produced, and when it was produced, during criminal cases.

## No Discovery Concerns Raised on Cases Discussed with Special Agents

We asked special agents and regional criminal enforcement counsel about processes used to collect, retain, and produce information on seven closed criminal cases that were investigated by the EPA and went to trial over the last seven years. None described any problems in producing discovery for these seven cases or any discovery issues raised during the trials. For one case, the regional criminal enforcement counsel said that a state inspector found photographs relevant to the case just before the trial began, but the relevant materials were brought forth before the trial and were appropriately disclosed to the prosecutor once they were identified, thus satisfying discovery obligations.

## Conclusions

Strengthening EPA discovery policies and procedures can promote efficient and effective criminal prosecution, ensure that defendants receive fair trials, and minimize the risks of overturned convictions or potential costs associated with having to retry a case because of discovery violations. While we did not identify any specific circumstances where OCEFT failed to adhere to criminal discovery requirements, OCEFT has opportunities to strengthen its processes and further reduce risks of not fulfilling discovery obligations.

## Recommendations

We recommend that the assistant administrator for Enforcement and Compliance Assurance:

1. Review Office of Criminal Enforcement, Forensics and Training policies and procedures to determine whether updates are needed to improve processes, including best practices.
2. Provide periodic training to EPA employees that may serve on a prosecution team to promote awareness and adherence to discovery requirements and investigative policies and procedures.

## Agency Response and OIG Assessment

Appendix B contains the Office of Enforcement and Compliance Assurance's response to our draft report. The Office of Enforcement and Compliance Assurance also provided technical comments, which we considered and incorporated, as appropriate, when we finalized this report.

The Office of Enforcement and Compliance Assurance agreed with our recommendations and provided acceptable planned corrective actions and estimated completion dates. Specifically, for Recommendation 1, the Office of Enforcement and Compliance Assurance stated that it will review OCEFT policies and procedures to determine whether updates are needed to improve processes, including the identification of best practices. For Recommendation 2, the office stated that it will provide mandatory officewide training on discovery requirements, policies, and procedures annually beginning in 2024. The proposed corrective actions satisfy the intent of Recommendations 1 and 2. Therefore, we consider the recommendations resolved with corrective actions pending.

## Status of Recommendations

Rec. No.	Page No.	Recommendation	Status*	Action Official	Planned Completion Date
1	18	Review Office of Criminal Enforcement, Forensics and Training policies and procedures to determine whether updates are needed to improve processes, including best practices.	R	Assistant Administrator for Enforcement and Compliance Assurance	4/1/24
2	18	Provide periodic training to EPA employees that may serve on a prosecution team to promote awareness and adherence to discovery requirements and investigative policies and procedures.	R	Assistant Administrator for Enforcement and Compliance Assurance	12/31/24

\* C = Corrective action completed.  
 R = Recommendation resolved with corrective action pending.  
 U = Recommendation unresolved with resolution efforts in progress.

## **Key OCEFT Policies and Procedures Related to the Collection, Retention, and Production of Investigatory Information and Evidence**

<b>OCEFT policy or procedure</b>	<b>Effective date</b>	<b>Review period or date</b>	<b>Information in policy or procedure relates to:</b>
OCEFT-I-010, <i>Computer &amp; Digital Evidence</i>	6/29/12	Review date: 6/30/14	Collection
OCEFT-I-011, <i>Consensual Monitoring of Verbal Communications</i>	6/29/12	Review date: 6/30/14	Collection, Retention
OCEFT-I-004, <i>Interviews</i>	6/29/12	Review date: 6/30/15	Collection, Retention, Production
OCEFT-I-006, <i>Search and Seizure</i>	6/29/12	Review date: 6/30/15	Collection, Retention, Production
OCEFT-I-007, <i>Evidence Handling</i>	6/29/12	Review date: 6/30/14	Collection, Retention, Production
OCEFT-I-003, <i>Investigative Reports Policy</i>	6/30/12	Review date: 6/30/14	Collection, Retention
OCEFT-I-002R1, <i>Investigative Process</i>	9/30/15	Review period: every three years	Collection, Retention, Production
OCEFT-I-009R1, <i>Environmental Forensic Support for Criminal Investigations</i>	10/22/21	Review period: every five years	Collection, Retention, Production
OCEFT-I-008R3, <i>Criminal Discovery</i>	8/30/22	Review period: every five years	Collection, Retention, Production
OCEFTPROC-2022-1, <i>Procedure to Implement OCEFT and DOJ Discovery Policies</i>	8/30/22	—	Retention, Production
OCEFTPROC-2022-2, <i>Information Technology Procedure</i>	8/30/22	—	Collection, Retention, Production

Source: OIG summary of OCEFT policies and procedures. (EPA OIG table)

## Agency Response to the Draft Report



### ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

December 15, 2023

#### MEMORANDUM

**SUBJECT:** Response to Office of Inspector General Draft Report: "The Office of Criminal Enforcement, Forensics and Training Incorporated Essential Discovery Elements into Its Policies and Procedures, but Additional Training Could Improve Awareness," Project No. OSRE-FY22-0145

**FROM:** David M. Uhlmann

A handwritten signature in blue ink, appearing to read "D. Uhlmann", is written over the printed name.

**TO:** Patrick Gilbride  
Director of Implementation, Execution, and Enforcement Directorate  
Office of Special Review and Evaluation

The Office of Enforcement and Compliance Assurance (OECA) appreciates the opportunity to respond to the findings and recommendations in the Office of Inspector General (OIG) *Draft Report: The Office of Criminal Enforcement, Forensics and Training Incorporated Essential Discovery Elements into Its Policies and Procedures, but Additional Training Could Improve Awareness (Project No. OSRE-FY22-0145)* (Draft Report), which the Office of Inspector General provided to us on November 16.

OECA concurs with the Draft Report's conclusions. I am pleased that OIG's evaluation of discovery policies and practices within the Agency's criminal enforcement program identified no instances of non-compliance with governing legal requirements. We have attached technical comments that include some minor corrections, using the template OIG provided, but OECA does not have any significant concerns with the accuracy of the Draft Report.

OECA also concurs with the Draft Report’s recommendations. We welcome the recommendation that we provide additional training to enhance awareness given the importance of our discovery obligations.

OECA appreciates the opportunity to work collaboratively with the OIG to ensure that the Agency’s criminal enforcement program is in full compliance with all discovery-related laws and policies, and to minimize future risks of noncompliance with these important legal duties.

If you have questions about OECA’s response or would like additional information, please contact OECA’s Audit Follow Up Coordinator, Gwendolyn Spriggs, [spriggs.gwendolyn@epa.gov](mailto:spriggs.gwendolyn@epa.gov).

Table of Corrective Actions

Rec #	OIG Report Recommendations	Corrective Actions	Completion Dates
1	Review Office of Criminal Enforcement, Forensics and Training policies and procedures to determine whether updates are needed to improve processes, including best practices.	OECA concurs with this recommendation and will review OCEFT policies and procedures to determine whether updates are needed to improve processes (including best practices).	April 1, 2024
2	Provide periodic training to EPA employees that may serve on a prosecution team to promote awareness and adherence to discovery requirements and investigative policies and procedures.	OECA concurs with this recommendation and will provide mandatory office-wide live virtual training on discovery requirements, policies, and procedures annually beginning in CY 2024.	December 31, 2024

## *Distribution*

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U.S. Environmental Protection Agency

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