



U.S. ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF INSPECTOR GENERAL

***Hotline Report:  
Operating efficiently and effectively***

# **Staffing Constraints, Safety and Health Concerns at EPA's National Enforcement Investigations Center May Compromise Ability to Achieve Mission**

Report No. 21-P-0131

May 12, 2021



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## Abbreviations

C.F.R.	Code of Federal Regulations
EMS	Environmental Management System
EPA	U.S. Environmental Protection Agency
EVS	Employee Viewpoint Survey
FY	Fiscal Year
GAO	U.S. Government Accountability Office
IEC	International Electrotechnical Commission
ISO	International Organization for Standardization
NEIC	National Enforcement Investigations Center
OCEFT	Office of Criminal Enforcement, Forensics, and Training
OIG	Office of Inspector General
PIQA	Professional Integrity and Quality Assurance
QA	Quality Assurance
OECA	Office of Enforcement and Compliance Assurance
QMS	Quality Management System
SHMS	Safety and Health Management System

**Cover Photo:** *Left:* National Enforcement Investigations Center building in Lakewood, Colorado. *Right:* Inside National Enforcement Investigations Center laboratory. (EPA photos)

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# At a Glance

## Why We Did This Audit

As a result of an OIG Hotline complaint, we conducted an audit of the U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance, specifically, the Office of Criminal Enforcement, Forensics, and Training and its National Enforcement Investigations Center. We conducted this audit to determine whether OCEFT and NEIC are addressing findings and implementing corrective actions from prior internal and external audits, inspections, and documented concerns related to NEIC.

OCEFT is a federal law enforcement entity that pursues criminal violators of air, water, and hazardous waste pollution laws. NEIC provides forensic, scientific, and technical support for EPA criminal and civil environmental investigations.

### This audit addresses the following:

- *Operating efficiently and effectively.*

### This audit addresses a top EPA [management challenge](#):

- *Improving workforce/workload analyses.*

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## ***Staffing Constraints, Safety and Health Concerns at EPA's National Enforcement Investigations Center May Compromise Ability to Achieve Mission***

### What We Found

NEIC has addressed internal and external findings and implemented corrective actions related to safety and health, yet concerns persist. These concerns include uncompleted internal safety and health audits and management reviews, hazardous waste mismanagement, noncompliance with safety procedures, and staff concerns about safety and health at NEIC.

**Safety, health, and attrition issues may compromise NEIC's ability to support the EPA's civil and criminal enforcement efforts.**

NEIC is addressing findings and implementing corrective actions related to its Quality Management System, which is designed to generate scientifically sound and legally defensible information to support environmental enforcement. We found that NEIC should improve tracking issues, such as observations, comments, concerns, and opportunities for improvement identified from audits; management review action items; and customer complaints.

NEIC had unresolved action items from OCEFT's Professional Integrity and Quality Assurance unit's 2017 inspection report related to staffing shortages, trust in management, and hazardous waste management. OCEFT did not conduct a follow-up review to examine the effectiveness of the implemented corrective actions. In 2020, as a result of an inspection by the State of Colorado, NEIC was cited for several hazardous waste violations. Further, NEIC's 2019 Federal Employee Viewpoint Survey results are 22 percent lower than the EPA's averages for questions related to management and work environment.

NEIC has been challenged by high attrition rates among staff and the inability to backfill vacant positions since 2016. If staffing levels continue to fall, NEIC risks a reduction in analytical capabilities and the ability to accomplish its mission.

### Recommendations and Planned Agency Corrective Actions

We made ten recommendations to the assistant administrator for Enforcement and Compliance Assurance, including developing a process for OCEFT to follow up on inspection findings and confirm whether corrective actions effectively address findings, as well as developing metrics on safety, health, and work environment to incorporate into NEIC management performance evaluations. The Agency agreed with seven recommendations and disagreed with three recommendations. We consider three recommendations resolved, two completed, and five unresolved. The Agency's response to our draft report illustrates that it does not fully understand or appreciate federal Office of Inspector General audit processes and standards. We stand by our conclusions and recommendations.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

May 12, 2021

**MEMORANDUM**

**SUBJECT:** Staffing Constraints, Safety and Health Concerns at EPA's National Enforcement Investigations Center May Compromise Ability to Achieve Mission  
Report No. 21-P-0131

**FROM:** Sean W. O'Donnell 

**TO:** Lawrence Starfield, Acting Assistant Administrator  
Office of Enforcement and Compliance Assurance

This is our report on the subject audit conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. The project number for this audit was [OA&E-FY20-0099](#). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. Final determination on matters in this report will be made by EPA managers in accordance with established audit resolutions procedures.

The EPA's response to the OIG's draft report illustrates that the EPA does not fully understand or appreciate federal OIG audit processes and standards, including the requirement to report information relevant to the audit objective. The EPA asserts that the OIG is not independent and unbiased because we did not incorporate all the information the Agency thought should be included in the report. The OIG has in fact incorporated relevant material provided by the Agency to contextualize our findings and provide the EPA's perspective. Ultimately, we believe this report accurately reflects the conditions we found during the audit. We remain steadfast in the quality of our reporting practices and are committed to communicating our findings and conclusions to the Agency, Congress, and the public.

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

**Action Required**

This report contains unresolved recommendations. The resolution process, as described in the EPA's Audit Management Procedures, begins immediately with the issuance of this report. Furthermore, we request a written response to the final report within 60 days of this memorandum. Your response 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.epa.gov/oig](http://www.epa.gov/oig).

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# Chapter 1

## Introduction

### Purpose

The U.S. Environmental Protection Agency's Office of Inspector General conducted this audit to determine whether the Office of Enforcement and Compliance Assurance's Office of Criminal

Enforcement, Forensics, and Training and OCEFT's National Enforcement Investigations Center are addressing findings and implementing corrective actions from internal and external audits, inspections, and documented concerns related to NEIC. This audit was initiated based on a complaint submitted to the OIG Hotline.

#### Top Management Challenge

This audit addresses the following top management challenge for the Agency, as identified in OIG Report No. [20-N-0231](#), *EPA's FYs 2020–2021 Top Management Challenges*, issued July 21, 2020:

- Improving workforce/workload analyses.

### Background

#### ***OCEFT Organization***

OCEFT is headquartered in Washington, D.C., with field investigative offices in the EPA's ten regional offices and in more than 30 other locations across the country. OCEFT investigates violations of environmental laws, with most cases stemming from three statutes: the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act (hazardous waste). OCEFT's criminal enforcement relies on scientists, regulators, permit writers, and other experts working in federal, state, and tribal law enforcement agencies, as well as other EPA programs.

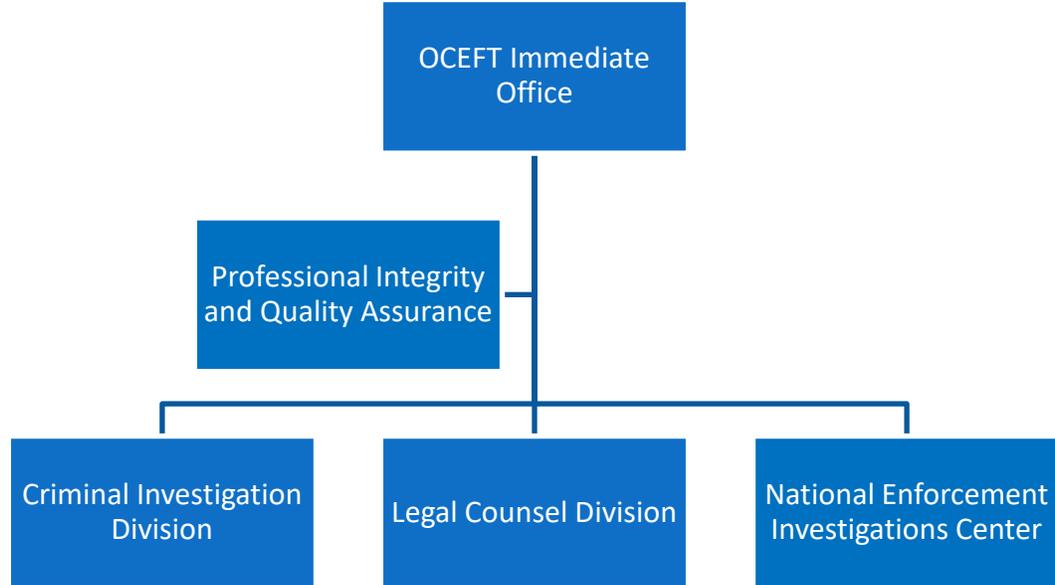
As of fiscal year 2020, OCEFT had approximately 270 employees. As shown in Figure 1, it is organized into three divisions:

- The Criminal Investigation Division is composed of special agents who are law enforcement officers. These agents focus investigative resources on cases that involve negligent, knowing, or willful violations of federal environmental law that often result in harm to human health or the environment.
- The Legal Counsel Division provides legal support and guidance on all legal and policy matters affecting the criminal enforcement of

environmental laws or the operations of NEIC. The attorneys in this division provide legal services to OCEFT management and staff, as well as to EPA regional counsels, in areas such as environmental and criminal law, forensic science, and expert witness preparation.

- NEIC, located in Lakewood, Colorado, provides forensics, science, and technical support for both criminal and civil environmental investigations.

**Figure 1: OCEFT organization**



Source: OIG summary of EPA information. (EPA OIG image)

***PIQA Functions***

OCEFT’s immediate office includes PIQA, which consisted of five employees as of December 2020. PIQA 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 general public. PIQA’s oversight areas are described in Table 1. Two areas relevant to this audit are PIQA’s inspection program and internal investigations.

**Table 1: PIQA oversight areas**

Area	Responsibility
<b>Inspection Program</b>	Responsible for assessing the effectiveness of internal controls in OCEFT’s operations. PIQA coordinates and conducts evaluations of internal controls through a comprehensive program of self-inspections and on-site verification inspections.
<b>Internal Investigations</b>	Responsible for investigating complaints against OCEFT investigators, managers, and other employees.

Area	Responsibility
<b>Quality Assurance Management</b>	Responsible for ensuring that OCEFT divisions that engage in activities involving the collection, analysis, and use of environmental data adhere to applicable Agency policies and standards concerning quality management and assurance. The PIQA QA manager is the senior quality management official within OCEFT.
<b>National Security Clearances</b>	Responsible for coordinating all aspects of the security-clearance process with the EPA's Security Management Division and the Personnel Security Branch.
<b>Drug Deterrence Program</b>	Responsible for coordinating drug-testing activities with the EPA's Office of Human Resources.

Source: OIG analysis based on EPA information. (EPA OIG table)

The PIQA inspection program covers all OCEFT divisions and programs, including NEIC. PIQA's reports from internal investigations do not render judgment on the allegations or evidence of misconduct; rather, the reports set forth the relevant facts uncovered during the investigative process to provide to OCEFT management. OCEFT management determines whether further action needs to be taken based on the results of the investigation. PIQA cannot initiate an investigation without the written consent of the OCEFT director or designee.

### **NEIC Organization**

NEIC is the environmental forensics center for the EPA's enforcement programs, which includes both laboratory and field operations. NEIC supports the EPA's civil and criminal enforcement through process-based investigations, development of new analytical and field methods, evaluations and modifications of existing methods, and expert technical consultation and advice. NEIC is accredited in accordance with the recognized International Organization for Standardization/International Electrotechnical Commission, known as ISO/IEC, 17025 certification; as such, its operations conform to those certification and supplemental forensic testing requirements. This accreditation demonstrates technical competence for a defined scope and the operation of a Quality Management System, known as QMS. The accreditation scope includes both field activities and chemistry.

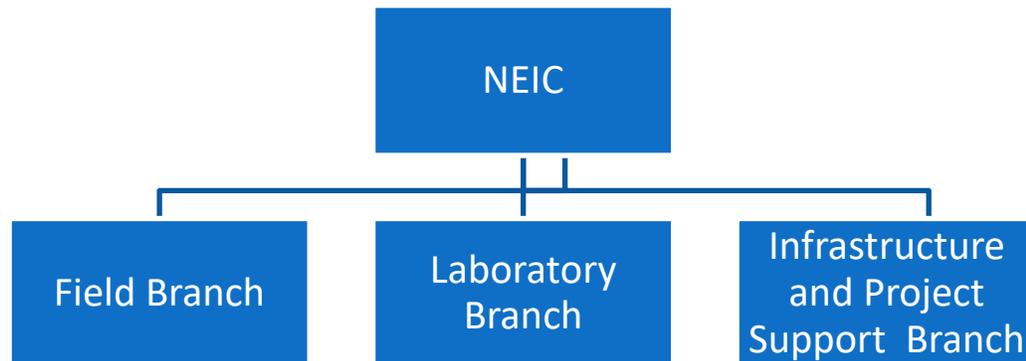
"NEIC's mission is to protect human health and the environment by serving as EPA's fully accredited ISO 17025 forensics laboratory and providing multi-disciplinary expert teams to conduct field investigations to gather and evaluate evidence and perform analytical services. NEIC supports criminal and civil enforcement partners by gathering data, providing engineering evaluations, analyzing forensic evidence, providing legally defensible data, serving as expert witnesses in the courtroom, and delivering investigative training."

—NEIC [website](#)

As of August 2020, NEIC had approximately 60 employees. As shown in Figure 2, NEIC consists of three branches:

- The Field Branch supports the EPA’s civil and criminal enforcement by conducting inspections, providing field sampling, and engineering evaluations.
- The Laboratory Branch provides analytical support to civil and criminal investigations in addition to conducting applied research and development to maintain sufficient scientific tools and applications for enforcement programs.
- The Infrastructure and Project Support Branch provides electronic data analysis in support of NEIC’s investigations. It also operates the QA program that helps to ensure NEIC operations conform to ISO standards.

**Figure 2: NEIC organization**



Source: OIG summary of EPA information. (EPA OIG image)

### ***Description of Audits, Inspections, and Documented Concerns Related to NEIC***

Our audit objective was to determine whether OCEFT and NEIC are addressing findings and implementing corrective actions from prior internal and external audits, inspections, and documented concerns related to NEIC. This includes all internal and external audits or inspections, including those related to QA, safety, and health.

Documented concerns include any nonconformities with accreditation requirements, staff and customer complaints, observations, or other concerns that were documented and provided to management or relevant staff, such as the QA or safety and health coordinators. NEIC’s *Quality Management Plan* requires that NEIC management encourage staff to report any issues that may impact the quality or efficiency of NEIC’s operations.

### Quality Improvement at NEIC

NEIC management actively supports improvement by encouraging the staff to:

- Continually evaluate the adequacy, performance, and effectiveness of current NEIC policies, procedures, and practices through internal auditing of the QMS.
- Apply innovative approaches, while maintaining integrity and accuracy.
- Respond to corrective action requests and search for root causes.
- Take appropriate actions by planning, documenting, and implementing a response to assessment findings in a timely manner.
- Encouraging employees to continually strive for improvements in quality and efficiency by identifying processes as candidates for improvements.

—NEIC Quality Management Plan

NEIC is subject to various types of internal and external audits, which may use different terminology or have different requirements for addressing findings or nonconformities. Table 2 provides examples of the types of audits, inspections, or documented concerns that may make findings and recommend corrective actions related to NEIC.

**Table 2: Sources of internal and external audits, inspections, and documented concerns**

Area	Activity
<b>Quality Management System</b>	<i>External</i> accreditation body periodically audits NEIC to assess conformance with accreditation requirements. At least annually, NEIC conducts <i>internal</i> audits to assess conformance with accreditation requirements (ISO/IEC 17025 and accreditation body supplemental requirements), previous audit findings from internal and external audits, previous remedial and corrective actions, and requests from NEIC personnel.
<b>Safety and Health Management System</b>	Periodic <i>external</i> audits conducted by the EPA's Safety, Health, and Environmental Management Program or <i>internal</i> audits conducted by NEIC staff. Safety and health audits assess NEIC's compliance with environmental, fire protection, and safety and health requirements and Agency policies, including the effectiveness of NEIC's Safety and Health Management System, or SHMS, and status of NEIC's conformance with applicable laws, regulations, and Agency policies.  More frequent inspections of NEIC's office, lab, and field components may also be conducted.
<b>Environmental Management System</b>	Annual <i>internal</i> audits conducted by NEIC, which include all EMS requirements, assess the status of previous findings from internal and external audits, as well as previous remedial and corrective actions.

Area	Activity
<b>Management System Reviews</b>	At least annually, senior NEIC management reviews each of the three management system components—QMS, SHMS, and EMS—to determine whether the components are successfully implemented and to identify opportunities for improvement. The review includes an evaluation of policies and procedures, such as obsolescence, changes in practice, and technological improvements; reports from managers and supervisors, such as concerns, negative trends, improvements, and suggestions; status and outcome of internal and external audits and assessments, such as follow-up from previous audits; and internal and external customer feedback and complaints. Documented concerns may be raised during these reviews or at any time during the year to management, the QMS coordinator, the SHMS coordinator, or other staff involved in QA.
<b>PIQA Oversight</b>	On an <i>ad hoc</i> basis, PIQA may conduct inspections or investigations of NEIC operations or employees (Table 1). The scope of PIQA inspections may cover other audit areas like QA and safety and health.

Source: OIG analysis based on EPA information. (EPA OIG table)

### **Requirements for Resolving Findings of Audits and Other Reviews**

The U.S. Government Accountability Office defines “internal control” as:

[A] process effected by an entity’s oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. ... Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity.<sup>1</sup>

Office of Management and Budget Circular A-123, *Management’s Responsibility for Enterprise Risk Management and Internal Control*, issued July 2016, defines obligations for risk management and internal control in federal agencies. EPA Order 1000.24 (CHG 2), *Management’s Responsibility for Internal Control*, requires all EPA organizations to establish and maintain internal controls to achieve effective and efficient program operations, including evaluating internal controls on an ongoing basis and taking prompt actions to correct any vulnerabilities identified.

The GAO’s governmentwide internal control standards contain components relevant to resolving the findings from audits and other reviews (Table 3).

<sup>1</sup> GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#), September 2014.

**Table 3: Key aspects of GAO internal control components relevant to this audit**

<b>Control Environment</b>
Management sets the tone at the top and throughout the organization by example, which is fundamental to an effective internal control system.
Management should demonstrate a commitment to recruit, develop, and retain competent individuals.
<b>Control Activities</b>
Control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system.
<b>Monitoring</b>
Internal control monitoring assesses the quality of performance over time and promptly resolves the findings of audits and other reviews. Corrective actions are a necessary complement to control activities in order to achieve objectives.
Management completes and documents corrective actions to remediate internal control deficiencies on a timely basis. These corrective actions include resolution of audit findings.
The audit resolution process begins when audit or other review results are reported to management, and the process is completed only after action has been taken that (1) corrects identified deficiencies, (2) produces improvements, or (3) demonstrates that the findings and recommendations do not warrant management action.
Management, with oversight from the oversight body, monitors the status of remediation efforts so that they are completed on a timely basis.

Source: OIG analysis of GAO internal control standards. (EPA OIG table)

Additionally, per NEIC’s operating procedures and *Quality Management Plan*, the NEIC quality manager, EMS coordinator, or SHMS coordinator shall conduct ongoing reviews of the status and estimated completion dates of incomplete corrective and preventive actions and shall notify NEIC management of actions that have not been completed. Ultimately, management is responsible for ensuring that problems that need attention are identified through the various assessments and facilitating a process to determine satisfactory solutions and the effectiveness of corrective actions.

## Responsible Office

OCEFT, within OECA, is responsible for overseeing NEIC operations.

## Scope and Methodology

We conducted our performance audit from February 2020 to February 2021. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. As detailed in Appendix A, we assessed the internal controls necessary to satisfy our audit objectives. In particular, we assessed the internal control components and underlying

principles—as outlined in the GAO’s governmentwide internal control standards—significant to our audit objectives. Any internal control deficiencies we found are discussed in this report.

To answer our objectives, we examined relevant OCEFT and NEIC policies and procedures, including OCEFT’s and NEIC’s *Quality Management Plans*, as well as NEIC’s *Corrective Action, Preventive Action, and Handling Complaints* operating procedure; *Quality Policy*; *Internal Audits of the NEIC Management System* operating procedure; *Management Review* operating procedure; SHMS policy; and *Safety Incident Reporting* operating procedure.

We examined the findings and corrective actions from the following audits, inspections, and documented concerns related to NEIC that were conducted or identified from October 2013 through March 2020:

- PIQA investigations and inspections, as well as manuals and plans associated with these reports.
- Internal and external QA audits, such as those related to NEIC’s ISO accreditation.
- Internal and external safety and health audits, as well as safety incident reports.
- EPA injury, illness, and near-miss reports.
- Action items and documented concerns identified during management reviews.
- Customer complaints.

We reviewed the 2019 Federal Employee Viewpoint Survey results for NEIC, which we discuss further in Chapter 5 and Appendix B.

While we requested audits on NEIC’s EMS, we did not focus on these audits because they are not central to NEIC operations and several EMS components are not controlled by NEIC. For example, recycling, utility usage, and landscaping issues are handled by EPA facilities or U.S. General Services Administration personnel.

We interviewed 61 percent of all current NEIC employees. We interviewed a total of 54 people, which included current and former OCEFT and NEIC management and staff from each NEIC branch, staff from other OCEFT divisions, and other EPA laboratory directors and managers (Table 4). We did not interview all former NEIC employees.

**Table 4: Summary of OIG interviewees**

Current NEIC staff	Current NEIC management	Former NEIC staff and management	External to NEIC (including three OCEFT managers)	Total OIG interviewees
26	9	9	10	54

Source: OIG summary. (EPA OIG table)

Note: In some cases, we conducted multiple interviews with an interviewee; thus, the total number of interviews is greater than 54. Interviews were conducted March–October 2020.

This report presents concerns that are supported by documentary, testimonial, or other evidence demonstrating that there is a reasonable basis for the concern. Testimonial evidence is a key data point in determining compliance with criteria, such as from NEIC’s *Safety Incident Reporting* operating procedure that states staff should report safety and health concerns without fear of reprisal. Staff interviews and testimonial evidence are also a key data point in assessing work environment in conjunction with other evidence, such as attrition.

# Chapter 2

## NEIC Has Addressed Nonconformities from QA Audits; Tracking of Some Issues Should be Improved

NEIC has addressed all nonconformities with accreditation requirements identified from QA audits, action items from management reviews, and customer complaints from FYs 2014 through 2019. NEIC, however, lacks systematic tracking of secondary issues from observations, comments, concerns, and opportunities for improvement identified from QA audits; management review action items that are not tracked anywhere else; and customer complaints. The absence of a systematic method of documenting and tracking review of these items leads to an increased probability of persistent issues not being adequately addressed, less informed decisions on whether actions are needed, and a negative impact on knowledge transfer among NEIC staff and management.

### Nonconformities from QA Audits Addressed; Secondary Issues Not Formally Tracked

NEIC’s ISO/IEC 17025 accreditation requires internal QA audits, as well as external QA audits from an accreditation body. We reviewed 25 internal and external QA audits conducted from FYs 2014 through 2019. These audits identified 38 nonconformities, which is the absence of or the failure to implement and maintain an accreditation requirement. Examples of nonconformities include no records of equipment calibration verification, lack of information in data packages to enable tests to be repeated under original test conditions, and missing information from the project file. We found all 38 nonconformities were addressed and documented as required by NEIC’s QMS. Nonconformities require corrections or corrective or preventative actions (see blue box). NEIC has a formal process that includes tracking these actions to address nonconformities. Findings that are not considered nonconformities are not required to have associated corrective or preventative actions or formal tracking.

#### Key Definitions

**Correction.** Action to eliminate a detected nonconformity. A correction can be made in advance of, in conjunction with, or after a corrective action.

**Corrective action.** Action to eliminate the cause of a nonconformity and to prevent recurrence. There can be more than one cause for a nonconformity.

**Preventive action.** Action to eliminate the cause of a potential nonconformity or other potential undesirable situation. There can be more than one cause for a potential nonconformity. Preventive action is taken to prevent occurrence whereas corrective action is taken to prevent recurrence.

—NEIC Operating Procedure

QA audits also identified a secondary group of issues referred to as “concerns, observations, comments and opportunities for improvement.” These are audit

results that do not meet the definition of a “nonconformity”—and, thus, do not require corrective action—but warrant consideration for improvement or preventive action. There were 99 items in this group. Common themes included outdated procedures, incomplete work, equipment issues, personnel training, and facilities issues.

While some of these secondary issues are addressed via the corrective or preventative action process, there is no systematic method or formal process to track them. It is left to the quality manager or designee’s discretion whether corrective, preventive, or other action needs to be taken. There is also no requirement to document decisions on whether to take corrective or other actions.

## **Other Sources of Issues Not Formally Tracked**

Nonconformities are identified from QA audits, as described above, but also from other assessments of the NEIC management system, such as management reviews or internal or external complaints. Nonconformities identified from these sources also require corrective or preventive actions for which NEIC has a formal process, including a formal tracking mechanism. Not all issues identified from these other sources are nonconformities, however. NEIC management, the quality manager, or the SHMS and EMS coordinators have discretion over whether an issue needs to be elevated and go through the required process for corrective or preventative action.

### ***Management Reviews***

As described in Table 2, NEIC senior management reviews the three management system components—QMS, SHMS, and EMS—at least annually to determine whether the components are successfully implemented and to identify opportunities for improvement.

The management review process results in a set of management review action items. From FYs 2014 through 2019, NEIC identified 69 management review action items. Examples of these action items include clarifying and documenting when real-time assessments are used at NEIC, working on collecting customer feedback in different ways, and providing specialized data training for field equipment. We found that NEIC addressed all 69 management review action items, but there was no formal tracking mechanism used unless an item was elevated to a corrective or preventive action. To determine whether the action item was addressed, the OIG had to piece together documentation from meeting agendas, notes, and emails. While NEIC’s *Management Review* operating procedure calls for the records of management reviews to be retained, it does not require formal tracking. The process is informal, using only meeting notes and agendas. There is also no requirement to document decisions on whether to take corrective or other actions.

## **Customer Complaints**

NEIC's customers include the Criminal Investigation Division, as well as enforcement programs in EPA regional offices. NEIC staff can receive customer complaints at any time. NEIC has procedures on how to handle these complaints, though there is no formal tracking mechanism used unless a complaint is elevated to a corrective or preventive action. There is also no requirement to document decisions on whether to take corrective or other actions based on a customer complaint. We identified eight complaints received by NEIC from FYs 2014 through 2019, and we found that NEIC had adequately addressed all the complaints. While NEIC has procedures on how to handle these complaints, including responsibilities for evaluation and tracking, there is no formal, central tracking mechanism used unless an item is elevated to a corrective or preventive action.

Examples of customer complaints include incorrect information in reports, poor communication, lack of preparation, unfamiliarity with monitoring equipment and installation requirements, and feedback on improving NEIC records collection and handling process. Two of these complaints did not go through the full complaint handling process. One was a complaint identified through a third party, and the other was an unofficial customer complaint for which no further action was needed. While NEIC's handling of these two complaints does not raise concerns, the fact that complaints in general are not always subject to formal, central tracking prevents NEIC from identifying and responding to repeat concerns.

## **Conclusions**

NEIC is addressing high-priority issues, such as nonconformities identified in QA audits. We found that NEIC should improve the tracking and documentation for secondary issues, such as concerns, observations, comments, and opportunities for improvement from QA audits as well as items from other sources, like customer complaints. Better tracking will improve NEIC's ability to respond to persistent issues, identify trends, make more informed decisions on whether there should be actions to address, and facilitate knowledge transfer among NEIC staff and management.

## **Recommendation**

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

1. Direct the National Enforcement Investigations Center to develop and implement a formal procedure and tracking mechanism (such as a consolidated spreadsheet) for National Enforcement Investigations Center decisions related to observations, comments, concerns, and opportunities

for improvement identified from audits; management review action items that are not tracked anywhere else; and customer complaints.

## **Agency Response and OIG Assessment**

The Agency disagreed with Recommendation 1, claiming that NEIC is already properly tracking the identified issues and is not required by NEIC's ISO 17025 accreditation to develop a mechanism to track issues identified by the OIG. While not necessarily required for accreditation, we believe that better tracking of secondary issues—such as from concerns, observations, comments, and opportunities for improvement from QA audits, as well as items from other sources, like customer complaints—will improve NEIC's ability to respond to repeat issues, identify trends, make more informed decisions on whether there should be actions to address, and facilitate knowledge transfer among NEIC staff and management.

Further, the Agency response noted that:

[F]or the first time in 10 years, the OCEFT Criminal Investigation Division has reported that it is satisfied with the support they receive from NEIC (a key customer not interviewed by OIG).

We did, in fact, interview special agents from the Criminal Investigation Division who coordinate with NEIC and, in Chapter 5, we report that NEIC staff recognize project completion time has improved, which was a primary customer complaint in the past. We believe improved tracking of issues raised by customer complaints and other sources could bolster management's case for future changes to the NEIC program that would benefit its customers. This recommendation is unresolved with resolution efforts in progress.

We included the Agency's full response to our draft report in Appendix C.

# Chapter 3

## OCEFT Did Not Follow Up on Inspection, and Some Issues Remain Unresolved

From October 2014 through March 2020, PIQA conducted one inspection, one investigation in 2017, and another investigation in 2020 of NEIC. Only the inspection resulted in corrective actions being developed. However, we found that the three corrective actions NEIC developed in response to the inspection did not address the findings, which were related to trust in management, staffing, and waste disposal issues. Also, while OCEFT requires corrective actions to address findings from PIQA inspections, it does not require follow-up. The effect of not following up on NEIC's corrective actions has resulted in these issues continuing to persist, including as reflected in a 2020 hazardous waste inspection by the State of Colorado that identified hazardous waste violations.

### Concerns Remain from 2016 NEIC Self-Inspection

In 2016, at the request of PIQA, NEIC conducted a self-inspection in advance of a PIQA inspection and identified 14 action items. We identified three concerns warranting follow-up from NEIC's 2016 self-inspection: (1) lack of adequate staffing to meet Agency goals, (2) a hiring system that has been “incredibly slow and is not helpful in recruiting the technical expertise needed at NEIC,” and (3) imports of technical data from the field due to difficulties with the Agency's firewall.

According to NEIC, the first two issues are not unique to NEIC. NEIC also noted that there is no formulaic corrective or remedial action, like those used to address concerns identified as part of QMS, SHMS, and EMS audits. NEIC provided us evidence of the business case it made to OECA leadership for additional hires. NEIC also noted that the work practices and timeliness of the EPA's human resources are not within NEIC's control and, while the speed at which hiring occurs has improved, hiring is generally still slow. Despite NEIC's efforts, we found that these concerns still remain. We found that the concern regarding technical difficulties with the Agency's firewall is largely resolved.

### Summary of PIQA Inspection and Investigations of NEIC

From October 1, 2014, through March 3, 2020, PIQA conducted one inspection in 2016 (resulting in a 2017 report) and two investigations—one in 2017 and one in 2020—of NEIC.

The inspection and investigations were requested by OCEFT management and are described below:

- The 2016 PIQA inspection’s goal was to assess the effectiveness of NEIC’s internal controls based on the GAO’s internal control standards. The inspection report found that NEIC was in “full compliance” in three of the GAO’s core functional areas: Training Management, Administrative Management, and Occupational Health and Safety Management. It found that NEIC was in “substantial compliance” in one of the core functional areas—Executive Management. The NEIC developed corrective actions for the report’s eight recommendations, which are discussed below.
- The 2017 investigation examined allegations of workplace harassment and scientific integrity concerns. The investigation report had no major findings, but it did find that internal policies and procedures for documenting results of analytical work were not followed. The 2017 investigation report made no recommendations.
- The 2020 investigation examined the circumstances that led to NEIC deficiencies in hazardous waste management, which were found during an inspection by the Colorado Department of Public Health and Environment on January 7, 2020. PIQA concluded that recent attrition at NEIC, the co-location project with the EPA Region 8 Laboratory in 2018 and 2019, and difficulty securing a contract to dispose of hazardous wastes partially contributed to NEIC’s hazardous waste violations. The 2020 investigation report made no recommendations. According to the PIQA special agent in charge, there is no expectation that NEIC will develop corrective actions based on PIQA investigation reports. Additionally, unlike inspections where there are action items or corrective actions that need to be completed, PIQA investigations are fact-finding in nature, and the results are reported to OCEFT and NEIC management for action, if necessary. No action was taken by OCEFT and NEIC management beyond what was described in the investigation report, which documented that, according to NEIC, the hazardous waste deficiencies and the causes for the deficiencies had been addressed.

## **Observations from 2017 PIQA Inspection Report Persist**

In response to the 2017 PIQA inspection report, NEIC developed an *Actionable Items Report* responding to all eight PIQA recommendations. The report included corrective actions, implementation dates, and a responsible party. All actions were expected to be completed by September 30, 2018. While NEIC implemented corrective actions to address PIQA’s observations, we found that three of PIQA’s observations persist, which indicates that the corrective actions did not effectively address these three observations (Table 5).

**Table 5: Effectiveness of NEIC corrective actions**

PIQA inspection observations and actionable items	Corrective actions implemented as reported by NEIC	OIG assessment of whether corrective action effectively addressed PIQA observation
<p>1. Observation: There is a general lack of confidence and trust in the management team.</p> <p>Actionable Item: Suggest continued management training and transparency in the management selection process.</p>	<ul style="list-style-type: none"> <li>Established an in-house leadership development program.</li> <li>Educated new supervisors via weekly meetings.</li> <li>Open multiple detail opportunities across NEIC to enable staff to have an opportunity to serve in a temporary management position.</li> <li>Encouraged NEIC managers to engage in OECA’s mentoring program.</li> <li>Hold regular branch and all-hands meetings to ensure transparent communication.</li> </ul>	<p style="text-align: center;"></p> <p>Trust in management and transparency in the management selection process continue to be issues, identified via OIG interviews. These issues are recognized by NEIC senior management.</p> <p>NEIC notes that the current management team is different from the management team at the time of the PIQA inspection and that it remains the responsibility and practice of the NEIC director and deputy director to constantly evaluate the capabilities of management at all levels in NEIC to provide leadership, management, and oversight of the organization.</p>
<p>2. Observation: Employees do not feel properly trained when they first come onto NEIC.</p> <p>Actionable Item: Develop a more robust on-the-job training program.</p>	<ul style="list-style-type: none"> <li>Action item in NEIC <i>Business Plan</i> to develop staff development plans that balance needs of NEIC with ongoing development of each staff member.</li> <li>Action item in NEIC <i>Business Plan</i> to develop onboarding process for new employees.</li> </ul>	<p style="text-align: center;"></p>
<p>3. Observation: Branches appear to have a significant amount of administrative duties without adequate support.</p> <p>Actionable Item: Recommend review of administrative burdens and consider additional administrative staff to support the branches.</p>	<p>NEIC does not have the staff or the funding to support additional administrative support. Instead, NEIC has developed an administrative team that operates out of the Infrastructure and Support Branch. The team provides administrative support to all three branches and backs up critical functions.</p>	<p style="text-align: center;"></p> <p>Lack of administrative support continues to be an issue highlighted by NEIC staff and recognized by NEIC management.</p> <p>NEIC noted that administrative support has been reduced across the Agency and these functions have been devolved to staff as part of their workload. NEIC has prioritized hiring for technical roles, supporting the core mission of NEIC. NEIC also said that this is not an action item that it has much, if any, influence over.</p>

PIQA inspection observations and actionable items	Corrective actions implemented as reported by NEIC	OIG assessment of whether corrective action effectively addressed PIQA observation
<p>4. Observation: The waste disposal officer left and another person was not identified to take over.</p> <p>Actionable Item: Duties of the waste disposal officer need to be addressed.</p>	<ul style="list-style-type: none"> <li>• Duties have been transferred to three staff.</li> <li>• NEIC's health and safety officer has taken a more active role in waste management.</li> <li>• Procedures have been updated based on the transfer of duties.</li> </ul>	<p style="text-align: center;"></p> <p>Distribution of waste control officer duties—that is, multiple people involved with no clear lead—and workload constraints due to staff attrition were contributing factors to the hazardous waste violations identified during the 2020 inspection. PIQA's March 2020 <i>NEIC Hazardous Waste Compliance Investigation</i> report also found that recent attrition at NEIC appeared to, in part, have led to solid waste compliance irregularities.</p> <p>NEIC said that as staff has turned over, it reassigned and documented the waste control officers duties and responsibilities.</p>
<p>5. Observation: Customers consistently complained about the length of time it took to get final analysis reports.</p> <p>Actionable Item: Turnaround time on reports needs to be reduced, especially on the civil side.</p>	<ul style="list-style-type: none"> <li>• Implemented the joint <i>Lab and Field Branch Quality Assurance Project Plan and Reporting</i> for the civil program.</li> <li>• Implemented a Lean effort for civil program project reports.</li> <li>• Implemented the <i>Lab Action Plan</i> aimed at shortening the time frames for the lab portions of reports.</li> </ul>	<p style="text-align: center;"></p>
<p>6. Observation: Communication with NEIC national technical coordinators located in Denver, Colorado, is stifled and inconsistent.</p> <p>Actionable Item: Develop a program by which the Criminal Investigation Division can access NEIC national technical coordinators on an ongoing basis.</p>	<p>The Region 8 national technical coordinator now sits at the Denver regional office, rather than Lakewood, Colorado, one day a week.</p> <p>The acting chief for the criminal section has increased communication with Criminal Investigation Division agents and has instructed national technical coordinators located in Lakewood to participate in regular calls with their assigned regions.</p>	<p style="text-align: center;"></p>
<p>7. Observation: Piece of equipment unaccounted for.</p> <p>Actionable Item: Recommend Field Branch contact the manufacturer for an expected return date.</p>	<p>The EPA's Office of Research and Development picked up the equipment from the manufacturer in March 2017 to borrow it for a joint project.</p> <p>Field Branch is evaluating alternatives to tracking equipment and will report to management upon update of tracking documentation.</p>	<p style="text-align: center;"></p>

PIQA inspection observations and actionable items	Corrective actions implemented as reported by NEIC	OIG assessment of whether corrective action effectively addressed PIQA observation
8. Observation: Staff not trained to enter equipment into inventory database.  Actionable Item: Recommend Lab Branch provide the training support needed.	Management provided training on the inventory database.	

Source: OIG analysis of NEIC corrective actions from 2017 PIQA inspection report. (EPA OIG table)

Note: OIG assessment based on document reviews and interviews.

The three PIQA observations that persist from Table 5 are described in more detail below.

### ***General Lack of Confidence and Trust in NEIC Management***

To address the 2017 PIQA inspection report finding related to a lack of confidence and trust in the management team, NEIC reported implementing several corrective actions, as described in Table 5. While many of those in management at NEIC have changed since 2016, interviews with staff indicate that there is still a general lack of confidence and trust in NEIC management, specifically NEIC senior management. We interviewed 44 current and former NEIC staff and managers. The majority of staff-level interviewees highlighted lack of trust in management as an ongoing issue, which, for most of the former employees, contributed to their departure from NEIC. In response to our question about this ongoing issue, NEIC senior management and OCEFT leadership said that not all staff have embraced the management’s focus on timeliness, customer service, and culture change.

### ***Administrative Duties***

The 2017 PIQA inspection report noted that “attrition has led to many vacant positions with no backfill and therefore additional work [for] the remaining employees, particularly for administrative roles.” NEIC’s original response to the 2017 PIQA inspection report was that NEIC does not have the staff or funding for additional administrative support. NEIC also said it developed an administrative team that operates out of the Infrastructure and Project Support Branch that provides support to all three NEIC branches and backs up critical functions. We found that the team lead originally assigned to this task has since retired and, according to interviews, administrative duties continue to be pushed down to the staff level. One NEIC manager estimated that, in the past, 75 percent of staff time was devoted to project productivity but that has decreased due to an increase in ancillary duties. Staff interviews confirmed that administrative duties are still a challenge for NEIC. NEIC confirmed that it no longer staffs an administrative team and “does not deliver administrative support.” Thus, the observation that NEIC branches appeared to have a significant amount of administrative duties

without adequate administrative support is still accurate and germane to our finding, described in Chapter 5, on NEIC’s staff shortage.

### **Hazardous Waste Management**

As described in Table 5, NEIC reported taking actions to respond to PIQA’s observation regarding waste disposal officer duties. One of the duties of the waste control officer is to arrange timely disposal of hazardous waste so that NEIC does not accumulate hazardous waste on-site in excess of its waste generator status. In January 2020, the Colorado Department of Public Health and Environment conducted a hazardous waste inspection of NEIC and found multiple violations related to NEIC waste management and disposal. Violations included failure to make hazardous waste determinations and failure to comply with regulations for a change in waste generator category. The results of this inspection are discussed in Chapter 4.

The violations highlight how the corrective actions to address PIQA’s 2017 inspection report observations were not effectively addressed. The violations from the state’s hazardous waste inspection resulted in an \$30,400 administrative penalty for the EPA.

Furthermore, the violations at NEIC and other EPA laboratories prompted an April 2020 memorandum from the assistant administrator for Enforcement and Compliance Assurance to all EPA assistant and regional administrators and their deputies. The memorandum reinforced the EPA’s environmental compliance responsibilities in light of compliance issues at several EPA laboratory facilities, particularly related to the management of waste materials regulated under the Resource Conservation and Recovery Act.

“In recent months, we have become aware of compliance issues at several EPA laboratory facilities, particularly related to the management of waste materials regulated under the Resource Conservation and Recovery Act. Deficiencies have included improper management of universal waste, failure to make hazardous waste determinations, failure to label waste, and failure to perform weekly inspections. These are significant issues, especially for an agency like ours that is charged with ensuring that all regulated entities comply with environmental requirements. EPA labs and facilities must comply with all environmental requirements while attending to their vital research, analytical, and mission support functions. They should perform better than, and be a model for, other facilities. Like other regulated entities, EPA facilities are subject to enforcement as well as penalties for noncompliance.”

—April 24, 2020 memorandum from the assistant administrator for Enforcement and Compliance Assurance, *Assuring Environmental Compliance at EPA Laboratories and Facilities*.

### **PIQA Not Required to Follow Up on Inspection Findings**

For inspections, OCEFT’s *Quality Management Plan* states that:

[I]nspected organizational unit must then return an “Actionable Items” report within 4 weeks of receipt of the OCEFT report, detailing the corrective actions proposed or implemented to

address any deficiencies identified during the inspection. When a corrective action has been reported as completed, the OCEFT QAM [QA manager] may conduct a limited follow-up confirmation review to document the effectiveness of the implemented corrective action.

OCEFT did not conduct a confirmation review to determine the effectiveness of NEIC's corrective actions from the 2017 PIQA inspection report. Our review found that three corrective actions were not effective and that PIQA's 2017 observations are still pertinent and unresolved. Additionally, the OCEFT's QA manager retired in December 2018, and the position remained vacant until April 2021.

## Conclusions

PIQA's 2017 inspection of NEIC made eight observations requiring corrective actions. Three observations have remained issues, as evidenced by our review of the corrective actions, as well as the 2020 Colorado Department of Public Health and Environment hazardous waste inspection that found hazardous waste management violations. OCEFT's *Quality Management Plan* does not require the auditing agency to follow up, so PIQA is not obligated to follow up on findings or observations from PIQA inspections. For NEIC to fully benefit from the resources invested in PIQA inspections and investigations, corrective actions taken in response to PIQA's inspections and investigations should be monitored and reviewed for effectiveness to ensure that observations are addressed and that corrective actions are effective.

## Recommendation

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

2. Direct the Office of Criminal Enforcement, Forensics, and Training to develop and implement a follow-up process for inspection findings, including determining and documenting whether corrective actions effectively address findings.

## Agency Response and OIG Assessment

The Agency agreed with Recommendation 2 and stated that PIQA has updated its *Office Inspection Program Manual* to follow up on high-priority action items to ensure items are completed and document follow-up as part of the inspection file. After reviewing the updated manual, we believe that the Agency's corrective

action adequately responds to our recommendation and consider Recommendation 2 complete.

In its response to our draft report, the Agency said that our report “mischaracterizes the role of PIQA within OCEFT” and that “it is not the role of PIQA to specifically take action on recommendations presented to management.” Our conclusion is based on language from OCEFT’s *Quality Management Plan* that states, in reference to PIQA inspections, that OCEFT’s QA manager, a position located in PIQA, “may conduct a limited follow-up confirmation review to document the effectiveness of the implemented corrective action.” It is reasonable to conclude that independent verification should occur to ensure the corrective actions stemming from PIQA’s inspections address PIQA’s original observations. This is especially true in the case of NEIC, given how infrequently PIQA conducts inspections of NEIC—only one inspection was conducted from 2014 through 2020. We revised the recommendation to remove specific reference to PIQA as the organization responsible for following up.

The Agency indicated that some of PIQA’s observations from its 2017 report are no longer relevant due to subsequent management changes and other factors; therefore, the observations made by PIQA at that time about managers cannot be imputed to the current management team. Table 5 already included the additional context previously provided by NEIC and highlights the PIQA observations that continue to be relevant. The Agency also claimed that our conclusion regarding the contributing factors that led to the hazardous waste violations at NEIC “is wrong and disregards information provided to OIG.” We stand by this conclusion and note that it is consistent with the conclusion PIQA made in its March 2020 *NEIC Hazardous Waste Compliance Investigation* report, which stated:

PIQA established that for many years, solid waste control and management at NEIC has been the result of various employees with shared accountability for regulatory compliance with EPA and Colorado statutes. Whereas several layers of compliance assurance checks and balances were in place in the past, recent attrition at NEIC coupled with the merger of the Region 8 Laboratory into Building 25 and difficulty relating to securing a contract to dispose of hazardous wastes appear to in part, have led to solid waste compliance irregularities.

We included the Agency’s full response to our draft report in Appendix C.

# Chapter 4

## Safety and Health Issues Persist, Though Steps Have Been Taken to Address Them

We found that NEIC has addressed many internal and external findings and implemented corrective actions related to safety and health, yet safety concerns have persisted. According to NEIC's *Quality Management Plan*, safety and health are integral parts of the NEIC management system; NEIC management philosophy is that a safe workplace is essential for long-term success. Senior management and supervisors are responsible and accountable for all safety and health issues at NEIC.

Yet, we identified multiple safety and health issues, including:

- Internal safety and health audits and management reviews not conducted as required.
- Hazardous waste mismanagement.
- Noncompliance with the *Safety Incident Reporting Operating Procedure*.

There are no records showing why the required safety and health audits and management reviews were not conducted. Hazardous waste mismanagement stemmed from a failure to address waste disposal findings identified over many years and reviews. Noncompliance with safety incident reporting resulted from, among other things, supervisors not adhering to the required process for preventive or corrective actions and related root-cause analyses. We also spoke with NEIC staff who had concerns about safety and health at NEIC caused by multiple issues, including a fear of reprisal for reporting job-related accidents. These findings raise concerns about NEIC maintaining a safe workplace for all employees that is free from recognized occupational safety and health hazards, as required.

### NEIC Progress on Addressing Safety and Health Concerns

We reviewed 77 safety and health related reports with 467 documented concerns from FYs 2014 through 2020. These included internal and external safety and health audits, incident reports, and laboratory walkthroughs. Laboratory walkthroughs are conducted monthly by laboratory staff at the direction of management to ensure safety. According to OCEFT, walkthroughs are attended by management to ensure follow-up is conducted on any issues identified. We considered all walkthroughs that took place in the same month as one safety and health related report.

In total, there are hundreds of documented concerns in the laboratory walkthroughs, ranging from objects obstructing an emergency eyewash to improperly labeled hazardous waste containers. We found evidence that many of the laboratory walkthrough concerns were addressed. Concerns, such as adequate laboratory ventilation and employee chemical exposure monitoring, required more extensive corrective actions, and NEIC is in the process of addressing these specific concerns.

Due to the large number of concerns identified, we followed up on a selected subset of 25 concerns. This subset includes concerns that were repetitive and occurred over many years or audits, had potential to do serious harm, or could create a significant impact on NEIC operations. These included:

- Seven concerns about laboratory equipment and facility issues, including concerns related to hazardous waste at the facility.
- Six concerns about safety and health incidents, such as injuries.
- Two concerns about NEIC's Occupational Safety and Health Committee and duties of the safety, health, and environmental program manager.
- Two concerns related to reviews not completed.
- Two concerns about training issues.
- Six concerns about policies, procedures, and manual issues.

We found that 20 of the 25 concerns were addressed, four are in the process of being addressed, and one safety and health concern persists. Described below are other safety and health concerns we identified throughout our audit.

## **Required Internal Audits and Management Reviews Were Not Conducted**

NEIC did not conduct the required internal SHMS audits in 2015, 2017, and 2019, nor did it conduct the required SHMS management reviews in 2017, 2018, and 2019.

The internal SHMS audit and the SHMS management review are required to be conducted annually. Safety and health audits assess NEIC's compliance with environmental, fire protection, and safety and health requirements and Agency policies, including the effectiveness of the NEIC's SHMS and status of NEIC's conformance with applicable laws, regulations, and Agency policies. Internal audits are conducted to identify nonconformities, commendable practices, and areas that would benefit from improvements. The SHMS management reviews involve reviewing data and information related to the efficacy and efficiency of the NEIC SHMS management system. Reviews include assessing opportunities for improvement and the need for changes to the SHMS, including the safety and health policy and objectives.

According to NEIC senior management, no records can be found that provide the reason an internal audit and management review were not performed prior to 2017. The SHMS coordinator, the Quality section chief, the branch chief, and the NEIC deputy director who were serving in 2017 are no longer with NEIC. In addition, the SHMS management review was not conducted in 2018. According to NEIC, a new SHMS coordinator was hired in April 2018, replacing the previous SHMS coordinator who had departed almost a year prior. In that interim period, safety and health duties were distributed among several staff members. NEIC added that it is likely, in the reconsolidation of the safety and health duties, the 2018 management review was overlooked. In addition, during construction associated with the co-location project with the Region 8 laboratory, some of the audits were temporarily suspended, as—according to OECA and NEIC management—it was “impracticable to conduct audits due to the scope and scale of the construction.”

While NEIC did not conduct the required internal SHMS audits in 2015, 2017, and 2019 or the required SHMS management reviews in 2017, 2018, and 2019, both were conducted in 2016. According to NEIC, the results of the 2020 internal audit were presented to the management team as part of the management review on December 3, 2020.

The results of these audits are to be used by NEIC to improve safety and health. A May 2019 external audit conducted by the EPA’s Safety, Health, and Environmental Management Program identified that throughout NEIC laboratory spaces, new and existing eyewashes and emergency showers were installed within six feet of existing electrical outlets that are not ground-fault circuit interrupter protected, which could cause electrocution. Since then, NEIC installed appropriate ground-fault circuit interrupter outlets. In another example, NEIC added the “Hazardous Waste” label to hazardous waste containers after the 2019 external audit found that those containers were not labeled as required. According to the NEIC *Quality Management Plan*, as problems that need attention are identified through the various assessments, management facilitates a process to implement satisfactory solutions.

According to NEIC’s *Management Review* operating procedure, “The outputs from SHMS management reviews shall include any decisions and actions related to possible changes to (1) safety and health performance, (2) safety and health policy and objectives, (3) resources, and (4) other elements of the SHMS.” Additionally, according to the *Internal Audits of the NEIC Management System* operating procedure, audit results “should include identification of commendable practices and any deficiencies or nonconformities, and provide an opportunity for reviewing, clarifying, and verifying deficiencies or nonconformities.” As the internal audits and management reviews were not conducted, the results are not available to improve NEIC. The results from the audits and reviews may have been particularly helpful during the co-location construction project with the Region 8 Laboratory in 2018 and 2019, when additional hazards were present.

## Hazardous Waste Management Problems

NEIC has received multiple documented concerns related to hazardous waste management. Hazardous waste contains properties that can have a harmful effect on human health and the environment if it is improperly managed. The Resource Conservation and Recovery Act—enforced for the Agency by OECA—is the primary law governing hazardous waste, including its generation, transportation, treatment, storage, and disposal. Waste must be managed in accordance with applicable state and federal regulations. Due to the nature of its work, NEIC generates different waste streams, including contaminated sampling equipment, disposable personal protective equipment, and field-testing waste. The NEIC Laboratory Branch is responsible for managing the primary hazardous waste streams generated at NEIC, including case samples and stock chemicals.

Approximately 35 hazardous waste management issues were identified at NEIC from internal and external audits from FYs 2016 through 2020, including failure to make an accurate hazardous waste determination, failure to properly label hazardous waste containers, and failure to indicate hazards of the contents. On January 7, 2020, the Colorado Department of Public Health and Environment inspected NEIC laboratory space and identified several deficiencies related to hazardous waste, resulting in a \$30,400 administrative penalty for the EPA. According to some NEIC staff we interviewed, hazardous waste issues were not taken seriously by senior management even after previous audits identified these issues. Four comments, from four interviewees, are included below as examples of the concerns expressed to the OIG.

### **Concerns expressed by some NEIC staff during OIG interviews regarding waste management**

- One staff member predicted hazardous waste issues would occur because the staff member felt that managers did not know what they were doing and do not care about safety. The staff member added that management is not engaged, do not self-reflect, and do not take the blame for anything.
- One staff member commented that NEIC management did not make hazardous waste a priority and never allowed the responsible staff the time and resources required for the hazardous waste job.
- One staff member said that hazardous waste violations discovered by the Colorado Department of Public Health and Environment were an issue and such violations have never been an issue in the past. The staff member added that management should have come in and worked to understand priorities, made adjustments, and made sure NEIC complied with regulations.
- One staff member commented that management is so focused on conducting the same number of inspections with shorter timelines and less staff—and hazardous waste violations were a direct result of this focus on output.

According to the NEIC director, ancillary duties, such as safety and health and waste management, are high priority. The director added that the 2020 Resource Conservation and Recovery Act violations were unexpected, as these violations occurred despite NEIC's prior knowledge that the Colorado Department of Public Health and Environment would conduct an inspection. According to the NEIC

director, the employee in charge of hazardous waste compliance had assured management that everything was ready in advance of the inspection. This was not the case, as evidenced by the inspection results, uncontested by NEIC, from the Colorado Department of Public Health and Environment. The director added that NEIC has hired a contractor to assist with NEIC’s hazardous waste management. NEIC provided supporting evidence to demonstrate that NEIC has taken actions to address the violations. Furthermore, safety and health and waste management are incorporated into the annual performance reviews for applicable staff and, according to the director, continue to be management priorities.

## Noncompliance with *Safety Incident Reporting Operating Procedure*

NEIC’s *Safety Incident Reporting* operating procedure states that employees should “immediately report” all job-related injuries, illnesses, accidents, or incidents to their supervisor. The procedure also states that “[i]f an employee considers an existing work condition or situation to be a health or safety hazard or potential hazard, it is his/her responsibility to report it directly to his/her supervisor, or, in the field, to the project manager. This reporting can be done without fear of reprisal.” The EPA Office of Mission Support’s *Near Miss Reporting Procedures for Employees and Supervisors* further clarifies that EPA employees who were involved in, witnessed, or identified a near-miss incident should report the incident within 24 hours to their supervisor. Anonymous reporting is allowed. According to NEIC and EPA procedures, EPA Form 1340-1, “Injury, Illness & Near Miss Report,” is to be filed with the SHMS coordinator within 48 hours of the incident being reported to a supervisor. Therefore, within 72 hours of identifying a near miss, EPA Form 1340-1 should be completed to help identify areas for hazard reduction and prevention. Per the EPA’s procedures related to this form, to assist in prevention, the SHMS coordinator should evaluate near-miss occurrences and describe the results of the evaluation and the corrective actions taken or planned. The procedure further states that an evaluation of each near-miss report should be completed within two weeks of receiving the form from an employee, supervisor, or other source.

**Near miss.** “[I]s any work-related event, potential occurrence, incident, action, or condition that could have resulted in a significant personal injury or illness or property damage, but instead either the injury, illness, or property damage was minor; was averted through prompt mitigative action; or did not occur due to timing or separation by distance or location.”

—NEIC *Safety Incident Reporting*  
operating procedure

NEIC did not follow the protocol for two near misses described in more detail below. From 2014 through March 2020, NEIC had 32 safety and health incidents—five of which resulted in injury or illness. There were no documented incidents occurring in 2016. Of the 32 incidents, 12 were documented on EPA Form 1340-1 more than 72 hours after the incident took place. Timely reporting

and prompt investigation of incidents and accidents is necessary to prevent similar or repeat occurrences. Per NEIC and EPA procedures, an investigation should identify causes of the incident and lead to the correction and abatement of the hazard. The SHMS coordinator is to maintain a written record of the incident and findings and evaluate any identified nonconformities.

### **October 2019 Near Miss: Explosive Hazard**

On October 31, 2019, an explosive hazard arising from the improper handling of an explosive chemical occurred in NEIC's laboratory, which constituted a safety and health related near miss. The incident was not reported or investigated in a timely manner, according to NEIC and EPA protocols. Instead, for this incident, EPA Form 1340-1 was completed on January 21, 2020, almost three months after the explosive hazard occurred. As a result, NEIC did not follow up on the incident until January 2020. On

**Explosive chemical.** "A solid or liquid chemical, which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings."

—Occupational Safety and Health Administration's [Hazard Classification Guidance](#)

April 6, 2020, NEIC initiated an examination into the reporting delay. According to NEIC's near-miss corrective action form, results from this investigation showed that the responsible supervisor did not immediately recognize the near miss as a reportable incident, did not understand the supervisor's role and responsibility for investigation and follow-up, and had not received formal training on preventive and corrective actions and related root-cause analysis.

According to OCEFT, the supervisor had received formal training and the Agency took the corrective action of removing the supervisor from management. The near-miss incident ultimately resulted in NEIC taking corrective action, including online training for supervisors and senior chemists on root-cause analysis for forensic service providers; updating two NEIC operating procedures (*Safety Incident Reporting* and *Corrective Action, Prevention Action, and Handling Complaints*); and training on the updated *Safety Incident Reporting* operating procedure. Additionally, the near miss resulted in a preventive action that included a training refresher on proper laboratory practices. Specifically, the chemist responsible for the near miss received counseling to not leave unattended volatile and flammable liquids on hot plates.

### **January 2020 Near Miss: Potential Exposure to Toxic Substance**

Another near miss occurred on January 3, 2020, when an employee was exposed to an unknown substance, which may have been the toxic substance strychnine. EPA Form 1340-1 was completed seven days after the incident was reported to the SMHS coordinator. According to NEIC documentation, it was difficult to reconstruct the series of events that led to the near miss due to the time elapsed

between the incident and the investigation; the number of staff involved; and the separation of an employee from the Agency before an interview could be completed, leading to information loss. For this near-miss incident, NEIC conducted a four-hour laboratory safety training class in March 2020 and reiterated good housekeeping practices.

The lack of timely investigations by NEIC into these two near misses diminished the ability to determine the causes, mitigate hazards, and prevent future workplace injuries and illnesses. Records such as the EPA Form 1340-1 contain information that helps employers, employees, and the Occupational Safety and Health Administration evaluate the safety of a workplace, understand industry hazards, and implement worker protections to reduce and eliminate hazards and prevent future workplace injuries and illnesses. Continual improvement in safety and health performance, including compliance, is accomplished, in part, by timely analysis of safety and health-related incidents.

## Staff Concerns About Safety and Health at NEIC

Qualitative data collected during our interviews indicated that a majority of current staff interviewed (22 of 26) are concerned about safety and health at NEIC. Staff shared concerns that senior management does not prioritize safety and health (19 of 26). Of the nine former NEIC employees we interviewed, seven expressed safety and health concerns, including a former SHMS coordinator who left NEIC due, in part, to health and safety concerns. NEIC's stated policy is to provide a workplace for all employees that is free from recognized occupational safety and health hazards that may cause serious injury or death.

### **Concerns Reporting Safety and Health and Other Issues**

According to NEIC's operating procedures, employees should immediately report all job-related injuries, illnesses, accidents, or incidents to their supervisor without fear of reprisal. NEIC's *Safety and Health Management System* manual says that management should encourage staff involvement in incident investigations. Despite this, documents from NEIC's Occupational Safety and Health Committee meeting minutes from November 2019 state, "Staff may be incentivized to not report spills, as they have been written up/admonished by managers in the past for reporting spills." We asked NEIC staff about their comfort level reporting QA and safety and health issues, as well as opportunities for improvement, to management. Our interviews found that 25 current and former staff had concerns reporting safety and health issues, and 13 current staff were not comfortable reporting safety and health concerns primarily due to fear of reprisal.

Fifty percent of the current staff we interviewed during our audit were not comfortable reporting safety and health concerns primarily due to **fear of reprisal, retaliation, or other reasons**. This is despite the *Safety Incident Reporting* operating procedure specifically stating that employees should report all job-related injuries, illnesses, accidents, or incidents **without fear of reprisal**.

Four comments, from four interviewees, are included below as examples of the concerns expressed to the OIG.

**Concerns expressed by some NEIC staff during OIG interviews regarding comfort level in reporting concerns, including safety and health incidents or opportunities for improvement**

- There is a culture of fear regarding reporting concerns.
- Staff members are not comfortable reporting concerns—such as those concerning health and safety, quality assurance, and opportunities for improvement—to NEIC management, and staff members cannot do anything without fear of reprisal.
- One staff member commented that management has never taken responsibility for anything and looks to blame staff. The staff member does not feel comfortable going to management with concerns.
- One staff member preferred reporting to the Quality Team members as they are easy to talk to, rather than bringing issues to management. The same staff member prefers talking to quality assurance and health and safety personnel but would not talk with management—even about quality issues—because management is not receptive to hearing suggestions unless it is about staff improvement. Managers are not interested in discussing management improvement.

This audit did not review specific allegations of reprisal at NEIC for reporting job-related injuries, illnesses, accidents, or incidents. Our focus was on the fear of reporting rather than on substantiating incidents of reprisal, as the *Safety Incident Reporting* operating procedure specifically states that employees should report all job-related injuries, illnesses, accidents, or incidents without fear of reprisal. Reprisal allegations identified during this audit were referred to another OIG component office for review.

When asked how to ensure staff report safety and health concerns, the NEIC director responded that the center now has an experienced SHMS coordinator, which demonstrates that senior management takes safety and health seriously. The director also said that lack of resources may have caused the perception that safety and health was not a priority. The director said that staff have been reminded on numerous occasions that staff are obligated to report safety and health issues and that management has taken reported issues seriously.

***Safety and Health Issues Due to Co-Location with Region 8 Laboratory***

In 2018, the EPA started a co-location project with the Region 8 laboratory and NEIC. This multiyear project involved construction and reconfiguration of NEIC facilities at the Denver Federal Center in Lakewood. Numerous safety and health concerns stemming from this co-location have been documented, including 82 findings from the external safety and health audit conducted by the EPA’s Safety, Health and Environmental Management Program in May 2019. Several high-priority findings, which have been subsequently addressed, resulted in new and existing eyewashes and emergency showers installed within six feet of existing electrical outlets and not protected by a ground-fault circuit interrupter. Other findings involved hazardous waste management, discussed in the “Hazardous

Waste Management Problems” section above, and fume hood issues discussed in the “Concerns with Nonfunctioning Laboratory Hoods” section below. In our interviews, eight NEIC staff also shared concerns related to the construction and other issues from the co-location. Concerns from three interviewees are noted below.

**Concerns expressed by some NEIC staff during OIG interviews regarding NEIC’s co-location with EPA Region 8 Laboratory**

- One staff member commented that co-location project safety issues brought to management were dismissed or ignored. Management does not emphasize safety, quality, and environmental management; rather, it emphasizes getting things done.
- One staff member commented that during the co-location process, outlets by an emergency shower did not have a ground-fault interrupter switch and if water contacted the outlet, a person could be electrocuted. The staff member also commented that during the co-location project, management pressured staff to get work done.
- One staff member commented that when there was construction in the laboratories, the staff member did not feel safe. Management pushed staff to pretend it was business as usual.

OCEFT said that the Office of Mission Support and the General Services Administration, not NEIC, were responsible for construction during the co-location project. OCEFT said that NEIC management would raise concerns to the Office of Mission Support and the General Services Administration but lacked the authority to address the concerns itself. We found evidence that the Office of Mission Support was aware of various safety and health issues as a result of a 2019 audit and that NEIC did notify the General Services Administration of issues requiring correction. According to OCEFT, the issues regarding co-location no longer exist because they were regarding a temporary work site situation. Yet, as discussed below in the “Concerns with Nonfunctioning Laboratory Hoods” section, air handling issues associated with the co-location persist. OCEFT also cited the co-location project as a reason for *not* conducting the required safety and health internal audit and management review in 2017.

***Safety and Health Committee***

The NEIC *Quality Management Plan* states that a key element of the SHMS is the occupational safety and health committee, which is designed to address safety and health issues and composed of representatives from each NEIC branch, a NEIC management representative, and contractor representatives. According to NEIC, the committee was suspended in early 2018, pending plans to consolidate the NEIC Health and Safety Program, which never materialized. NEIC’s Safety and Health Committee was not fully reconstituted until early 2019. Our interviews with NEIC staff also highlighted the importance of a safety and health committee and concerns about its suspension.

## **SHMS Coordinator Duties**

The NEIC *Quality Management Plan* states:

A SHMS coordinator ... provides an independent NEIC-wide focus on safety, health, and environmental management. SHMS coordinator duties include providing safety training, coordinating a medical monitoring program, coordinating internal and external SHMS assessments, and ensuring that NEIC is focused on the requirements of safety and environmental laws and regulations.

There was no SHMS coordinator from November 2017 through April 2018. The staff member hired in April 2018 to fill the SHMS coordinator position also did toxicology project work as a secondary function. According to NEIC senior management, the duties relating to safety and health were temporarily distributed among staff when there was no single SHMS coordinator.

OIG interviews of NEIC staff, including former SHMS coordinators, highlighted confusion about the role of the SHMS coordinator. In May 2020, the SHMS coordinator departed NEIC, and NEIC hired an industrial hygienist as the new SHMS coordinator. In our interviews, 14 current and former NEIC employees shared concerns related to SHMS coordinator duties; examples of concerns from two interviewees are noted below.

### **Concerns expressed by some NEIC staff during OIG interviews regarding SHMS coordinator duties**

- One staff member commented that NEIC management did not allow the time or resources required for the SHMS coordinator to do the job properly and that the previous coordinator only did some of the tasks that the coordinator was required to do. The staff member added that some of the duties were divided up and there were no assurances that things were getting completed. The staff member explained that dividing up these duties is not something that has been traditionally done in a laboratory setting, but NEIC is moving in the right direction with a dedicated SHMS coordinator.
- One staff member commented that a lot of safety duties were doled out to chemists and that NEIC had not emphasized hiring health and safety staff. The staff member explained that when the SHMS coordinator was hired, this person conducted only partial SHMS duties, proving NEIC does not prioritize safety. In addition, when the SHMS coordinator, waste control officers, and others left NEIC, all these duties were delegated to laboratory staff in a haphazard fashion; it was a crazy juggling act, the staff member said. The staff member added that the chemists did the best they could but safety and quality were on the backburner and speed was prioritized. Duties for health and safety and waste management were spread out. The staff member hopes that the SHMS coordinator and management does not split up the SHMS duties among staff. The staff member also added that there were SHMS coordinator duties assigned to the staff member; however, the staff member never received any training and found this frustrating.

## **Concerns with Nonfunctioning Laboratory Hoods**

NEIC uses fume hoods to protect laboratory employees working with flammable or toxic chemicals. As part of the co-location project with Region 8, almost all of NEIC's 27 hoods were retrofitted for energy conserving, low-flow operation. In November 2019, a testing service found that none of the hoods could be certified due to overall deficiencies in air flow, resulting from problems with the air handling system. Since certified hoods are necessary to continue some laboratory operations, NEIC scheduled and funded a local testing service to test and certify five of the hoods for use in March 2020. The five hoods were certified that month.

As of October 2020, those five hoods were the only ones certified for use. Prior to November 2019, it is unclear whether NEIC hoods were operational but not necessarily certified for use. From November 2019 through March 2020, NEIC had no hoods that were certified for use. According to NEIC, no systemic corrections to the air handling system have been made, and the project contractor has not yet certified the remaining hoods in the NEIC facility. NEIC further stated that when contracting issues are resolved, the remaining hoods may be tested and certified. In our interviews, five NEIC employees expressed concerns over the hoods used in the laboratory; examples of concerns from three interviewees are noted below.

### **Concerns expressed by some NEIC staff during OIG interviews regarding concerns over NEIC fume hood operation**

- One staff member commented that when hoods go down, they may not know, and when that happens, they are opening themselves up to exposure or worse.
- One staff member commented that safety is not prioritized. The staff member added that, at one point, NEIC had only one or two operating hoods and staff had to shuffle stuff between hoods.
- One staff member commented that they were threatened with reprimands for not doing work on noncertified hoods or hoods that were broken.

OCEFT and NEIC senior management said that these deficiencies are not within their control to correct, stating, "Construction related matters concerning the co-location project, including problems with the air handling units, fall under the purview of the Office of Mission Support and the General Services Administration." As noted above, while we found evidence that NEIC notified the General Services Administration of safety and health issues as a result of the co-location project, it is unclear the extent to which OCEFT and NEIC elevated issues related to laboratory hood operation within their own management chains to ensure timely correction.

## Conclusions

As an environmental forensic center that conducts both fieldwork and laboratory analysis, NEIC faces many safety and health hazards and risks associated with the services it provides. The NEIC safety and health policy aligns with NEIC's core mission and includes commitments to continually improve the safety and health program, prevent injuries and ill health, and maintain regulatory compliance.

While our audit found that NEIC is addressing many findings from the various and ongoing safety and health related audits, we also identified multiple concerns associated with:

- Required internal audit and management reviews not being conducted.
- Hazardous waste mismanagement.
- Noncompliance with the safety incident reporting procedure.
- Staff and other documented concerns about safety and health at NEIC, including:
  - Staff comfort level in reporting safety and health and other issues.
  - Safety and health issues due to the co-location project.
  - Inconsistent operation of the safety and health committee.
  - Confusion over SHMS coordinator duties.
  - Concerns with nonfunctioning laboratory hoods.

The NEIC safety and health policy aligns with NEIC's core mission and includes commitments to continually improve safety and health performance, prevent injuries and ill health, and maintain regulatory compliance. Yet, safety and health concerns have persisted. NEIC needs to consistently complete required audits and reviews, prioritize hazardous waste management, conduct safety incident reporting according to policies and procedures, address staff fear of reprisals for the reporting of safety and health as well as other issues, and further demonstrate to NEIC staff that safety and health are priorities for NEIC management.

## Recommendations

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

3. Conduct a follow-up review of hazardous waste management at the National Enforcement Investigations Center to determine whether it is complying with relevant statutes and regulations and verify internal controls are in place to ensure future compliance.

4. Provide annual training on safety incident reporting procedures to all National Enforcement Investigations Center employees and managers, including training on preventive or corrective actions and related root-cause analysis.
5. Develop and incorporate metrics that address safety and health issues and staff concerns into National Enforcement Investigations Center senior management performance standards, such as collecting anonymous feedback from all staff annually.
6. In coordination with the assistant administrator for Mission Support, verify that all laboratory hoods at the National Enforcement Investigations Center are operational and certified for use.

## Agency Response and OIG Assessment

The Agency agreed with Recommendations 3, 4, 5, and 6. We found the corrective actions provided for Recommendations 4 and 6 are acceptable and consider these recommendations resolved with corrective actions pending.

For Recommendation 3, the intent was for an independent or external party to conduct a follow-up review of hazardous waste management at NEIC. Based on the Agency's response to our draft report, we revised the recommendation to remove PIQA as the organization responsible for following up. Based on the information provided after our exit meeting with the Agency, Resource Conservation and Recovery Act inspectors in NEIC's Field Branch, in addition to the laboratory section chief, have oversight authority to ensure compliance with hazardous waste regulations. Additionally, the Agency said that Region 8's waste management lead and a contractor have been hired to assist the NEIC waste control officer with properly executing the officer's duties. We acknowledge that these are additional internal controls NEIC has put in place to ensure compliance. We continue to believe that an independent or external party needs to review NEIC's enhanced internal controls to verify they are working as intended to ensure future compliance. The recommendation is therefore unresolved with resolution efforts in progress.

For Recommendation 5, the corrective action provided by NEIC —“to review senior manager performance standards to ensure that their commitment to maintain a dedicated Health and Safety FTE and complete annual audits continues”—is helpful. However, the corrective action, as written, does not fully address other safety and health issues and staff concerns identified in this chapter, such as fear of reprisal for reporting concerns and following the *Safety Incident Reporting* operating procedure. The recommendation is therefore unresolved with

resolution efforts in progress. We revised the wording in Recommendation 5 to be consistent with Recommendations 9 and 10.

The Agency disagreed with our characterization of staff safety and health concerns. We have made clarifications to our report but, ultimately, we stand by our conclusions. While we did not verify every staff concern identified during our interviews, the concerns we present in the report are supported by documentary, testimonial, or other evidence demonstrating that there is a reasonable basis for the concern. Further, testimonial evidence is a key data point in determining compliance with criteria, such as that staff should report safety and health concerns without fear of reprisal according to NEIC's *Safety Incident Reporting* operating procedure. It is apparent from our interviews of current and former NEIC employees, including former SHMS coordinators, that *fear* of reprisal exists. OCEFT management requested examples of reprisal we gathered, but we do not share identifying information that would violate interviewee confidentiality, as it may have a chilling effect on the willingness of Agency staff share information with the OIG. Reprisal allegations identified during this audit were referred to another OIG component office for review.

We included the Agency's full response to our draft report in Appendix C.

# Chapter 5

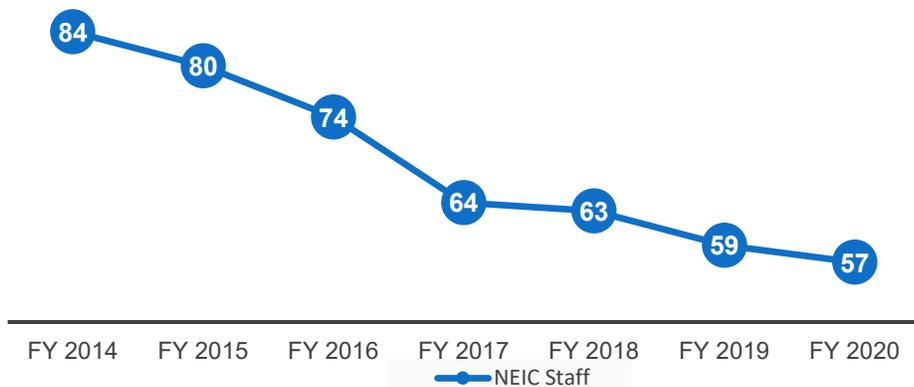
## NEIC Faces Severe Staffing Shortage Due to Work Environment, Attrition, Difficulty Hiring

NEIC is challenged by high attrition among staff and the inability to backfill positions due to multiple factors, including limits on hiring and, for the hiring approvals it does have, a slow hiring process. NEIC’s lack of adequate staffing to meet Agency goals has been a concern since at least NEIC’s 2016 self-assessment. In 2017, PIQA reported that attrition has led to many vacant positions, with no backfilling and existing work being dispersed among remaining staff. OCEFT and NEIC senior management cite lack of staff as a main concern for NEIC. While retirement eligibility is a concern of NEIC senior management, our interviews with staff indicated that the working environment is directly related to staff attrition and intent to leave NEIC. The GAO’s internal control standards require management to demonstrate a commitment to competence, including recruiting, developing, and retaining competent individuals, along with succession and contingency plans. Should staffing levels continue to fall, NEIC risks a reduction in analytical capabilities and endangers the ability to accomplish its mission to protect human health and the environment by supporting the EPA’s civil and criminal enforcement efforts.

### NEIC Has Experienced Significant Staff Reductions

According to NEIC-provided data, from FYs 2014 through 2020, NEIC has lost 27 full-time employees, representing a net reduction of 32 percent from 2014 levels (Figure 3). Senior management at OCEFT and NEIC agree that the biggest challenge facing NEIC is staffing. In comparison, the EPA’s total workforce declined by 8 percent over this same period.

Figure 3: NEIC’s reduction in staff numbers, FYs 2014–2020



Source: OIG summary of information provided by NEIC. (EPA OIG image)

According to the OCEFT director, as budgets started to shrink, experienced senior staff began to leave without the opportunity to pass on historical knowledge. Additionally, staff buyouts complicated the ability to backfill. The director confirmed that NEIC needs more chemists and laboratory personnel. Another hiring need is administrative support, the lack of which has resulted in specialists performing administrative work alongside their project duties. According to OECA:

NEIC's budget is largely comprised of the S&T [Science and Technology] appropriation. This is a very small portion of the Agency's overall budget, and almost every dollar of S&T [Science and Technology] by OECA goes towards NEIC. The issue is that the limited amount of S&T [Science and Technology] funding provided to OECA, and OECA's traditional high FTE [full-time equivalent] costs, means that any reductions from the Agency in S&T have a disproportionate impact on our FTE as there are very few extramural dollars from which OECA can absorb such reductions. OECA has been working with the Agency to try to obtain more S&T [Science and Technology] resources to address these reductions over the last seven years, however, OECA cannot substitute other types of funding to address the shortfalls.

NEIC is part of a larger criminal enforcement program, and staff hiring is considered from an officewide perspective. The OCEFT director explained that OCEFT has committed to having 165 special agents in the Criminal Investigation Division, which represents a large proportion of OCEFT staff. These special agents investigate alleged criminal violations of federal law. NEIC supports these special agents through forensic evidence collection, such as sampling, monitoring, and documenting sites. In addition to its accredited field support, NEIC also provides forensic analytical support with its accredited laboratory. With more special agents comes more work for NEIC, given the field and laboratory support NEIC provides to criminal enforcement investigations.

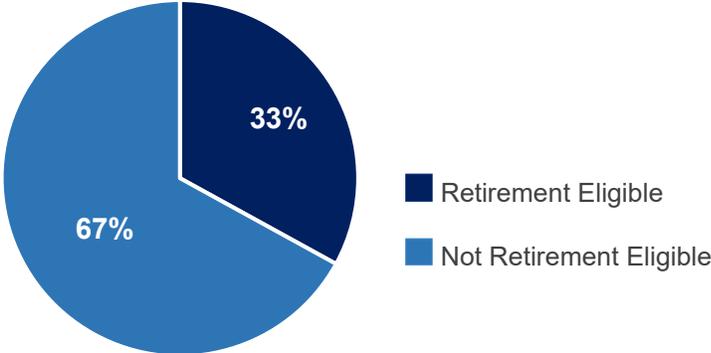
The OCEFT director stated that NEIC has to compete with other OCEFT divisions for staff, and NEIC has a lower staffing priority than the Criminal Investigation Division. The NEIC director also cited resources and staffing levels as its biggest challenges. Also, while resources have declined, there is still an expectation to perform at the same level. NEIC chemists are not interchangeable, as each has a specialty. With fewer chemists, NEIC may have no option but to reduce services to EPA criminal and civil enforcement programs.

## **Retirement Eligibility**

According NEIC-provided data, as of August 2020, NEIC had 57 full-time employees, and 19 (33 percent) were eligible for retirement at the end of 2020. Figure 4 shows the percent of retirement-eligible staff for NEIC, and Figure 5

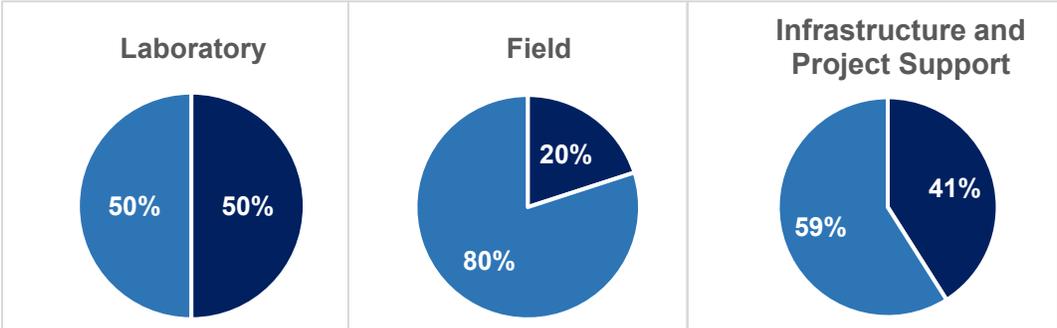
breaks that down for the Infrastructure and Project Support Branch, Field Branch, and Laboratory Branch. The Laboratory Branch is at greatest risk of reduction in services as it has the highest percent of retirement-eligible staff. Having a high percentage of retirement-eligible staff is not unique to the NEIC. In February 2020, before a House Energy and Commerce Subcommittee, then-EPA Administrator Andrew Wheeler said that 40 percent of the EPA’s workforce is eligible to retire.

**Figure 4: NEIC’s retirement-eligible staff**



Source: OIG analysis of information provided by NEIC. (EPA OIG image)

**Figure 5: NEIC’s retirement-eligible staff by branch**



Source: OIG analysis of information provided by NEIC. (EPA OIG images)

There are 16 staff, two supervisors, and one branch chief in the Laboratory Branch. Historically, this branch has had 35 staff with expertise to provide 36 analytical capabilities, or types of chemical analysis and methods. As of February 2020, NEIC offers 29 analytical capabilities. Analytical requests, such as those related to pesticides, are chronically backlogged and—according to NEIC—will remain in that state indefinitely due to a lack of staff. Eight of the 16 staff became eligible for retirement at the end of FY 2020, and NEIC expects to lose 35 percent of its laboratory staff in the next three years.

NEIC provides unique analytical capabilities, consultation services, expert reports, and testimony in support of EPA enforcement investigations and cases. According to OCEFT and NEIC documents, the laboratory analyzes samples that are nonroutine and not accepted either at all or at reasonable cost by contract

laboratories. Had all eligible Laboratory Branch staff retired at the end of 2020 without replacements, the branch would have been only able to offer two analytical capabilities, as opposed to the 29 offered as of February 2020. According to NEIC documents, for newly hired staff, it can take two years to gain the competency expected for some laboratory techniques. OCEFT further clarified that recent hires were able to become competent on certain methods within six months, while complicated methods may take more time. In addition, training will take time away from sample analysis and report writing.

For the Field Branch, 45 percent, or eight, management and staff will be eligible for retirement by February 2023, and NEIC could lose decades of institutional knowledge and regulatory expertise. According to NEIC documents, current workloads are not sustainable and burnout risk is high. For Field Branch staff, it may take up to two years for a civil inspector and NEIC technical coordinator to be credentialed. It will take longer for civil inspectors to be qualified to lead inspections. It takes a significantly longer time—many years—to become a national expert.

For the Infrastructure and Project Support Branch, 59 percent, or ten, of the current staff will reach retirement eligibility by October 2022. As a result, NEIC anticipates losing capacity for many of its functions. Table 6 highlights anticipated capacity loss or services impacted as a result of retirement.

**Table 6: Anticipated capacity loss resulting from retirement**

<b>NEIC branch and staff (as of August 2020)</b>	<b>Time frame</b>	<b>Retirement eligible</b>	<b>Projected impacts based on current staffing progress</b>
<b>Laboratory Branch (16 staff)</b>	By February 2023	35% (six staff)	<ul style="list-style-type: none"> <li>• Reductions in nearly all analytical capabilities.</li> <li>• Chronic backlog of analytical requests such as pesticide analysis.</li> <li>• Reduced on-site chemistry expertise.</li> </ul>
<b>Field Branch (18 staff)</b>	By February 2023	45% (eight staff)	<ul style="list-style-type: none"> <li>• Inability to support complex inspections.</li> <li>• Acceptance of fewer projects.</li> <li>• Loss of regulatory expertise, which is vital to civil and criminal programs.</li> <li>• Increased workload on Office of Compliance, Office of Civil Enforcement, and regions.</li> <li>• Loss of institutional knowledge when experts retire before knowledge can be transferred.</li> </ul>
<b>Infrastructure and Project Support Branch (17 staff)</b>	By October 2022	59% (ten staff)	Reductions or delays in all branch services, including: <ul style="list-style-type: none"> <li>• Shipping and receiving.</li> <li>• Property management.</li> <li>• Contracts, interagency agreements, and purchasing.</li> <li>• Technical editing.</li> <li>• QMS and accreditation.</li> <li>• EMS.</li> <li>• Facilities operations and maintenance.</li> <li>• Data management and database maintenance.</li> </ul>

Source: OIG analysis based on data provided by NEIC. (EPA OIG table)

## ***Succession Planning and Difficulties Hiring***

Both the EPA and NEIC have a high percentage of retirement-eligible staff. The EPA can address this issue through workforce planning and succession management. Workforce planning is an essential task of government agencies, designed to systematically identify and address the gaps between the workforce each agency has today and the one it needs to meet future needs.<sup>2</sup> The EPA will be competing for talent with other federal agencies, as well as the private sector. This makes it even more critical that NEIC develop and execute workforce plans to address competency gaps and implement succession plans to fill those gaps. NEIC provided us documents that demonstrate gaps and future loss of capacity. The OCEFT director further clarified, stating that “NEIC has utilized any number of creative solutions to address the hiring gaps (such as cross-training staff across branches or areas of expertise), but a truly sustainable solution requires a long-term commitment to appropriately staffing the Center.”

As noted above, the 2016 NEIC self-inspection found two issues relevant to staffing and attrition—lack of adequate staffing to meet Agency goals and a hiring system that has been slow and ineffective at recruiting the technical expertise needed at NEIC. According to NEIC, the ability to address these issues is outside of NEIC’s control and not unique to NEIC. NEIC provided us evidence of the business case it has made for additional hires, which NEIC presented to OECA leadership in 2020. The NEIC director explained that there are efforts to hire chemists, engineers, and administrative staff, but hiring is not keeping pace with those leaving.

NEIC management also noted that the work practices and timeliness of the EPA’s human resources is not within NEIC’s control and, while the speed at which hiring occurs has improved, hiring is generally still slow. The 2017 PIQA inspection report also highlighted lack of administrative support as an issue, but NEIC has chosen to prioritize hiring for technical roles. According to NEIC, administrative support has been reduced across the Agency, and these functions have been devolved to staff as part of their workload. NEIC management said that this is not an action item that it has much, if any, influence over.

## **Work Environment Contributing to High Attrition at NEIC**

While retirement eligibility is a concern for NEIC senior management, we learned that many staff intend to leave NEIC regardless of their retirement eligibility. Of the current staff-level employees we interviewed, 15 of 26 (58 percent) shared their intent to leave NEIC as soon as possible—in other words, they are actively looking for work elsewhere or considering taking early retirement. Of these employees, 14 of 15 (93 percent) indicated the work environment as their reason for intending to leave. We also interviewed nine former NEIC employees, eight of

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<sup>2</sup> Workforce planning requirements are issued by the U.S. Office of Personnel Management and defined in 5 C.F.R. Part 250, Subpart B, Strategic Human Capital Management, effective April 11, 2017.

whom shared that the work environment contributed or caused them to leave NEIC. Both current and former employees expressed fear of retaliation, the use of reprimands by senior management, a lack of trust in senior management, and low staff morale as reasons for leaving. Four comments, from four interviewees, are included below as examples of the concerns shared with the OIG.

**NEIC staff concerns expressed during OIG interviews regarding NEIC work environment**

- One staff member commented that senior management does not foster an environment where one feels appreciated. During a meeting about the results of the EVS, morale, and succession planning, someone mentioned that chemists used to work until retirement eligible or beyond. A NEIC senior manager then asked if anyone wanted leave, they would shake their hand. The staff member added that senior management was not concerned about transfer of knowledge or fostering an environment of continuing excellence at NEIC.
- One staff member has seriously considered leaving NEIC because staff members are not appreciated by those in charge. That staff member said that scientists feel good about the project work they have done and that the work was appreciated by other scientists but not by NEIC management. The staff member added that senior managers think that the staff cannot do anything right, and it was clear that management does not care to retain experts.
- One former staff member left NEIC due to the culture and a lack of management support for frontline supervisors and scientists. The former staff member added that senior management made the culture worse by focusing on project turnaround time over quality, fostered an us-versus-them mentality between management and staff, and did not understand nuance needed to change.
- One staff member commented that there is a culture of fear at NEIC and that saying anything that may be construed as negative about management could result in reprisal.

The 2017 PIQA inspection report included a finding related to a lack of confidence and trust in NEIC’s management team. As a result, NEIC implemented corrective actions as described in Table 5. In addition, the OCEFT director noted that “since 2016, the entire NEIC management team except for one (a manager who is now in a different management position) has changed.” Interviews with staff indicate there still exists a general lack of trust in NEIC management and leadership. OCEFT responded that employees’ negative view of their work environment can be influenced by being held to proper performance standards, as well as being held accountable in misconduct and disciplinary matters.

***EPA’s 60-Day Inspection Report Goal Highlights Disconnect Between Management and Staff over Accountability and Work Environment***

From our discussions with the OCEFT director and NEIC senior management and staff, we observed a disconnect between management and staff regarding views on personnel accountability and how accountability is achieved. This disconnect is largely manifested through views on the June 2018 EPA policy that established an agencywide 60-day time frame for completing inspection reports. NEIC staff shared in interviews that the 60-day standard puts undue pressure to quickly

complete, oftentimes, complex projects. NEIC senior management stated that the 60-day standard is a goal, that flexibility is granted as needed, and that missing the 60-day standard holds no adverse consequences for employees.

NEIC explained that the EPA’s 60-day standard helped to address customer complaints that NEIC inspection reports were taking too much time and were delaying civil and criminal enforcement proceedings. NEIC management acknowledged that it has been a challenging culture change, but one that was worth pursuing in the name of efficiency and accountability for NEIC to deliver on its mission. NEIC management said that in communicating this goal to employees, management explains that flexibility is available and encourages staff to communicate any potential delays so that senior management is aware and can address the issues, if possible. According to OCEFT, the majority of NEIC criminal reports have, in fact, missed the 60-day goal and no staff have been reprimanded.

Ten staff members shared with us that NEIC has improved its project completion time and that, in that past, the primary customer complaint was about project time frames. Thirteen staff members also shared with us that they perceive NEIC management is not accepting of project delays and feel undue pressure to meet the 60-day standard above all else, contributing to a negative work environment.

**NEIC EVS Results Highlight Work Environment Concerns**

We reviewed the Federal EVS results for 2019 and noted that NEIC’s results are well below the [overall Agency results](#) and below other EPA laboratory results. We also compared the results to other EPA laboratories in a variety of locations across the country, specifically laboratories within the Office of Air and Radiation and the Office of Research and Development. While services offered at EPA laboratories vary, comparison offers a useful frame of reference.

The EVS questions included in Table 7 demonstrate concerns from NEIC employees. Additional EVS questions are included in Appendix B. Results include the percent and number of survey respondents who answered affirmatively to the questions asked. For these EVS questions, NEIC’s results are, on average, 22 percent lower than the overall Agency results. The NEIC Laboratory Branch results are 38 percent lower than the overall Agency results.

**Table 7: Subset of questions and affirmative results from 2019 Federal EVS**

Question	NEIC		Other EPA laboratories				All EPA
	All	Lab Branch	Narragansett Lab	Gulf Breeze Lab	Duluth Lab	Ann Arbor Lab	
Employees are protected from health and safety hazards on the job.	54% of 49	31% of 17	100% of 35	80% of 26	94% of 38	96% of 25	<b>83% of 8,034</b>

Question	NEIC		Other EPA laboratories				All EPA
	All	Lab Branch	Narraganset Lab	Gulf Breeze Lab	Duluth Lab	Ann Arbor Lab	
Prohibited personnel practices (for example, illegally discriminating for or against any employee/applicant) are not tolerated.	45% of 46	34% of 16	94% of 31	71% of 25	90% of 32	71% of 20	<b>70%</b> of 7,171
In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	16% of 49	10% of 17	28% of 32	16% of 25	46% of 35	23% of 24	<b>34%</b> of 7,974
Considering everything, how satisfied are you with your organization?	36% of 48	15% of 17	50% of 34	34% of 26	50% of 38	65% of 25	<b>56%</b> of 8,021
Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?	46% of 49	27% of 17	65% of 34	72% of 26	82% of 38	52% of 25	<b>66%</b> of 7,725
Are you considering leaving within one year?	53% of 49	N/A	N/A	N/A	N/A	20% of 25	<b>27%</b> of 8,352

Source: OIG summary of data from the Office of Personnel Management. (EPA OIG table)

Notes: Results include the percent of survey respondents that answered affirmatively to the question asked out of the total respondents to the question. "N/A" means results are not available for that EPA suborganization. The overall NEIC response rate for this survey was 89 percent, and the NEIC Lab response rate was 94 percent. The overall EPA response rate was 63 percent. Not all questions garnered the same number of responses because not all respondents may have answered the question or respondents may not have had a basis to answer a particular question. As a result, the number of respondents varies based on the question.

In response to the low EVS results from the previous year, NEIC senior management held listening sessions with staff in March 2019, but our interviews with staff suggested the issues remain.

According to the GAO's internal control standards, management sets the tone throughout the organization by example. The work environment described by NEIC staff, the pervasive fear of retaliation or reprisal for reporting issues, the low morale, and the lack of trust in NEIC management, as well as EVS results, indicate that NEIC's organizational culture needs to improve.

## NEIC Efforts to Retain Staff

The GAO's internal control standards state that management should demonstrate a commitment to recruit, develop, and retain competent individuals. Specifically, to retain individuals, NEIC senior management should consider providing incentives to motivate and reinforce expected levels of performance and desired conduct. When asked what is being done to retain staff at NEIC, the director explained that it is different for each employee and that NEIC has tried several approaches. NEIC started to track the staff impacts on NEIC to show the individual value of each staff member. The NEIC director said that some staff appreciate awards and NEIC is trying to use awards more meaningfully to

recognize accomplishment. For example, while some offices divide the awards evenly, NEIC distributes awards based on individual merit.

NEIC management has also attempted to retain staff through various other approaches. Some examples include involving staff in decisions, such as which projects NEIC should select to complete; creating a staff-led committee for planning social activities; and focusing on improved use of ratings to distinguish performance. According to the director, everyone received high performance ratings in the past, so there was no meaningful recognition of actual high performance. NEIC has tried to recalibrate ratings commensurate with actual employee performance. The director noted that recalibrating ratings may not help retain all employees but would retain high-performing employees. The director added that NEIC has tried to improve consistent communication through section, branch, and all-hands meetings. In spite of all this, as evidenced by the high attrition, our interviews with staff indicating low morale, and low EVS scores, additional efforts are needed to retain current staff. In December 2020, NEIC created its own anonymous suggestion box on its intranet to solicit employee feedback on how to improve NEIC.

## Conclusions

According to NEIC, its operations are based on staff experience and involve highly complex, technical knowledge. The ability to prepare complex, significantly contaminated samples for analysis is unique to NEIC. NEIC notes that almost every EPA laboratory would decline the samples NEIC accepts. It is generally recognized that NEIC is relied on by the EPA to analyze the most complex samples requiring nonstandard analytical methods. The ability to prepare those samples comes from decades of knowledge that can only be passed along through intense training. In the field, NEIC states that its inspectors have intimate knowledge of EPA regulations and how the regulations apply to complex industry processes. With staff attrition, regulatory knowledge may be recovered over time, but the technical expertise to execute a variety of highly complex inspections and tie the findings to a regulation will be greatly diminished for the foreseeable future. NEIC's ability to retain staff is being impacted by a negative work environment and difficulty hiring new staff. If these issues remain unresolved, NEIC's ability to fulfill its mission is at risk.

## Recommendations

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

7. Develop and implement a staffing plan for the Office of Criminal Enforcement, Forensics, and Training incorporating projections of National Enforcement Investigations Center workload based upon the

number of Criminal Investigation Division agents, the needs of other EPA enforcement programs, and other factors.

8. In coordination with the assistant administrator for Mission Support, develop a joint action plan for hiring new staff at the National Enforcement Investigations Center and promptly address delays in hiring.
9. Develop and incorporate metrics on the National Enforcement Investigations Center work environment and culture into Office of Criminal Enforcement, Forensics, and Training senior management performance standards, such as results from the annual Federal Employee Viewpoint Survey, periodic culture audits, or other methods to measure progress.
10. Develop and incorporate metrics that address work environment and culture into National Enforcement Investigations Center senior management performance standards.

## Agency Response and OIG Assessment

The Agency agreed with Recommendations 7 and 8. For Recommendation 7, the Agency provided a staffing plan that can be used for workload analysis and succession plans. After reviewing the Agency's corrective action, we consider this recommendation complete. For Recommendation 8, we found that the corrective actions provided are acceptable and consider this recommendation resolved with corrective actions pending.

While disagreeing with Recommendations 9 and 10, the Agency provided a template for senior leadership performance standards and *OECA's Equity, Diversity and Inclusion Program 2021* document as evidence that these recommendations have been addressed.

The template for senior leadership performance standards does not include specific metrics on NEIC work environment and culture. *OECA's Equity, Diversity and Inclusion Program 2021* document includes some relevant language for addressing the intent of Recommendations 9 and 10. For example, the document includes "maintain a high-performing workforce" and "encourage staff retention" as part of OECA's goals. It also includes "conducting employee surveys" and "responding to EVS issues" as examples of activities that support OECA's goals. OCEFT and NEIC senior management can engage in implementing the Equity, Diversity, and Inclusion program and, at the same time, work towards addressing Recommendations 9 and 10 on NEIC work environment and culture.

The corrective actions, as written, do not fulfill the intent of Recommendations 9 and 10 to *develop and incorporate metrics* on NEIC work environment and

culture into OCEFT and NEIC senior management performance standards. Thus, these recommendations are considered unresolved with resolution efforts in progress.

The Agency disagreed with our characterization that the work environment at NEIC is a contributing factor to staff shortages. It said:

[T]he OIG fails to identify a single instance of such retaliation by management. Any reprimands issued by management are done in full accordance with Agency policy, and with the involvement of the Labor and Employee Relations staff in the Office of Human Resources and, as necessary, with the Office of General Counsel...OCEFT management believes that there seems to be a continuing misunderstanding by some members of the staff of the difference between reprisals and reasonable management expectations of accountability.

We stand by our conclusions regarding NEIC's work environment and the need for Recommendations 9 and 10. These recommendations are supported by testimonial evidence gathered from our interviews, which found that 14 of 26 (54 percent) of current staff-level employees interviewed expressed an intent to leave NEIC due to the work environment. Extrapolated across the entire NEIC workforce, this could mean at least 25 percent of *all* current NEIC employees are intent on leaving NEIC. These recommendations are also supported by the 2019 EVS scores and the attrition rates at NEIC compared to the rest of the EPA. Additionally, a negative work environment can exist in the absence of proven retaliation by management. We believe that the bar for a positive work environment should be set higher than the absence of retaliation. Allegations of retaliation identified during this audit were referred to another OIG component office for review.

We included the Agency's full response to our draft report in Appendix C.

# **Status of Recommendations and Potential Monetary Benefits**

## RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	12	Direct the National Enforcement Investigations Center to develop and implement a formal procedure and tracking mechanism (such as a consolidated spreadsheet) for National Enforcement Investigations Center decisions related to observations, comments, concerns, and opportunities for improvement identified from audits; management review action items that are not tracked anywhere else; and customer complaints.	U	Assistant Administrator for Enforcement and Compliance Assurance		
2	20	Direct the Office of Criminal Enforcement, Forensics, and Training to develop and implement a follow-up process for inspection findings, including determining and documenting whether corrective actions effectively address findings.	C	Assistant Administrator for Enforcement and Compliance Assurance	4/16/21	
3	33	Conduct a follow-up review of hazardous waste management at the National Enforcement Investigations Center to determine whether it is complying with relevant statutes and regulations and verify internal controls are in place to ensure future compliance.	U	Assistant Administrator for Enforcement and Compliance Assurance		
4	34	Provide annual training on safety incident reporting procedures to all National Enforcement Investigations Center employees and managers, including training on preventive or corrective actions and related root-cause analysis.	R	Assistant Administrator for Enforcement and Compliance Assurance	10/31/21	
5	34	Develop and incorporate metrics that address safety and health issues and staff concerns into National Enforcement Investigations Center senior management performance standards, such as collecting anonymous feedback from all staff annually.	U	Assistant Administrator for Enforcement and Compliance Assurance		
6	34	In coordination with the assistant administrator for Mission Support, verify that all laboratory hoods at the National Enforcement Investigations Center are operational and certified for use.	R	Assistant Administrator for Enforcement and Compliance Assurance	9/30/21	
7	44	Develop and implement a staffing plan for the Office of Criminal Enforcement, Forensics, and Training incorporating projections of National Enforcement Investigations Center workload based upon the number of Criminal Investigation Division agents, the needs of other EPA enforcement programs, and other factors.	C	Assistant Administrator for Enforcement and Compliance Assurance	4/2/21	
8	45	In coordination with the assistant administrator for Mission Support, develop a joint action plan for hiring new staff at the National Enforcement Investigations Center and promptly address delays in hiring.	R	Assistant Administrator for Enforcement and Compliance Assurance	9/30/21	

**RECOMMENDATIONS**

<b>Rec. No.</b>	<b>Page No.</b>	<b>Subject</b>	<b>Status<sup>1</sup></b>	<b>Action Official</b>	<b>Planned Completion Date</b>	<b>Potential Monetary Benefits (in \$000s)</b>
9	45	Develop and incorporate metrics on the National Enforcement Investigations Center work environment and culture into Office of Criminal Enforcement, Forensics, and Training senior management performance standards, such as results from the annual Federal Employee Viewpoint Survey, periodic culture audits, or other methods to measure progress.	U	Assistant Administrator for Enforcement and Compliance Assurance		
10	45	Develop and incorporate metrics that address work environment and culture into National Enforcement Investigations Center senior management performance standards.	U	Assistant Administrator for Enforcement and Compliance Assurance		

<sup>1</sup> C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

## Internal Control Assessment

This table identifies which internal control components and underlying principles are significant to our audit objective.

Which internal control <u>components</u> are significant to the audit objective?	Which internal control <u>principles</u> are significant to the audit objective?
<b>X Control Environment</b> The foundation for an internal control system. It provides the discipline and structure to help an entity achieve its objectives.	1. The oversight body and management should demonstrate a commitment to integrity and ethical values.
	2. The oversight body should oversee the entity's internal control system.
	3. Management should establish an organizational structure, assign responsibilities, and delegate authority to achieve the entity's objectives.
	<b>X</b> 4. Management should demonstrate a commitment to recruit, develop, and retain competent individuals.
	5. Management should evaluate performance and hold individuals accountable for their internal control responsibilities.
<b>Risk Assessment</b> Management assesses the risks facing the entity as it seeks to achieve its objectives. This assessment provides the basis for developing appropriate risk responses.	6. Management should define objectives clearly to enable the identification of risks and define risk tolerances.
	7. Management should identify, analyze, and respond to risks related to achieving the defined objectives.
	8. Management should consider the potential for fraud when identifying, analyzing, and responding to risks.
	9. Management should identify, analyze, and respond to significant changes that could impact the internal control system.
<b>X Control Activities</b> The actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity's information system.	<b>X</b> 10. Management should design control activities to achieve objectives and respond to risks.
	<b>X</b> 11. Management should design the entity's information system and related control activities to achieve objectives and respond to risks.
	<b>X</b> 12. Management should implement control activities through policies.
<b>Information and Communication</b> The quality information management and personnel communicate and use to support the internal control system.	13. Management should use quality information to achieve the entity's objectives.
	14. Management should internally communicate the necessary quality information to achieve the entity's objectives.
	15. Management should externally communicate the necessary quality information to achieve the entity's objectives.
<b>X Monitoring</b> Activities management establishes and operates to assess the quality of performance over time and promptly resolve the findings of audits and other reviews.	<b>X</b> 16. Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.
	<b>X</b> 17. Management should remediate identified internal control deficiencies on a timely basis.

Source: Based on internal control components and principles outlined in GAO-14-704G, *Standards for Internal Control in the Federal Government* (also known as the "Green Book"), issued September 10, 2014.

## NEIC's 2019 Federal EVS Results

Question	NEIC		Other EPA Laboratories				All EPA
	All	Lab Branch	Narraganset Lab	Gulf Breeze Lab	Duluth Lab	Ann Arbor Lab	
I feel encouraged to come up with new and better ways of doing things.	61% of 49	38% of 17	81% of 36	59% of 27	76% of 38	74% of 25	<b>66%</b> of 8,821
I have sufficient resources (for example, people, materials, budget) to get my job done.	27% of 49	11% of 17	31% of 36	23% of 26	14% of 37	42% of 25	<b>41%</b> of 8,260
I can disclose a suspected violation of any law, rule, or regulation without fear of reprisal	49% of 48	36% of 17	82% of 34	58% of 27	81% of 37	66% of 24	<b>63%</b> of 7,732
Employees have a feeling of personal empowerment with respect to work processes.	20% of 49	10% of 17	58% of 36	19% of 26	56% of 37	65% of 24	<b>45%</b> of 8,006
Employees are protected from health and safety hazards on the job.	54% of 48	31% of 17	100% of 35	80% of 35	94% of 38	96% of 25	<b>83%</b> of 8,034
Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant) are not tolerated.	45% of 46	34% of 16	94% of 31	71% of 25	90% of 32	71% of 20	<b>70%</b> of 7,171
I recommend my organization as a good place to work.	39% of 49	15% of 17	77% of 35	57% of 26	68% of 38	75% of 25	<b>65%</b> of 8,191
In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	16% of 49	10% of 17	28% of 32	16% of 25	46% of 35	23% of 24	<b>34%</b> of 7,974
My organization's senior leaders maintain high standards of honesty and integrity.	26% of 48	20% of 17	51% of 31	21% of 24	52% of 31	45% of 21	<b>43%</b> of 7,580
I have a high level of respect for my organization's senior leaders.	29% of 49	15% of 17	39% of 33	19% of 26	57% of 36	41% of 24	<b>44%</b> of 8,011
How satisfied are you with the policies and practices of your senior leaders?	21% of 49	15% of 17	26% of 34	15% of 26	43% of 38	36% of 25	<b>35%</b> of 8,049
Considering everything, how satisfied are you with your organization?	36% of 48	15% of 17	50% of 34	34% of 26	50% of 38	65% of 25	<b>56%</b> of 8,021
Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?	46% of 49	27% of 17	65% of 34	72% of 26	82% of 38	52% of 25	<b>66%</b> of 7,725
Are you considering leaving within one year?	53% of 49	N/A	N/A	N/A	N/A	20% of 25	<b>27%</b> of 8,352

Source: OIG summary of data from the Office of Personnel Management. (EPA OIG table)

Notes: Results include the percent of survey respondents that answered affirmatively to the question asked out of the total respondents to the question. "N/A" means the results were not available for the EPA suborganization. The number of respondents varies based on the question.

## Agency Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

March 29, 2021

### MEMORANDUM

**SUBJECT:** Response to the Office of Inspector General's Draft Report, *Staffing Constraints, Safety and Health Concerns at EPA's National Enforcement Investigations Center May Compromise Ability to Achieve Mission*, Project No. OA&E-FY20-0099

**FROM:** Lawrence E. Starfield, Acting Assistant Administrator

LAWRENCE  
STARFIELD

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LAWRENCE STARFIELD  
Date: 2021.03.29  
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**TO:** Patrick Gilbride, Director  
Environmental Research Programs Directorate  
Office of Evaluation

Thank you for the opportunity to respond to the Office of Inspector General (OIG) Project No. OA&E-FY20-0099, *Staffing Constraints, Safety and Health Concerns at EPA's National Enforcement Investigations Center May Compromise Ability to Achieve Mission*, dated February 25, 2021.

The Office of Enforcement and Compliance Assurance's (OECA) Office of Criminal Enforcement, Forensics and Training (OCEFT) and its National Enforcement Investigations Center (NEIC) understand that the OIG's recommendations are aimed at ensuring that the NEIC's support of both civil and criminal enforcement work is being conducted effectively and safely. However, OECA feels that many of the conclusions being reached in the subject report are not supported by facts and/or disregard information previously provided to the OIG. In addition, the overall report does not accurately reflect both the historical and current challenges faced by NEIC, nor does it include the myriad of evidence provided to OIG.

### OECA's Concerns with the Audit Report

OECA's overarching concern is that the OIG has not provided an independent and unbiased review of the information it received during the course of its audit. Specifically, the report does not incorporate critical information provided to the OIG audit team by management, instead often relying on unsubstantiated statements from staff as if they are statements of fact. In general, the standards that OIG follows in conducting its audit work require auditors to support their findings with sufficient and appropriate evidence; to evaluate evidence and determine whether it is reliable, including analyzing the

objectivity and credibility of testimonial evidence; and to exercise reasonable care and professional skepticism in conducting their inquiry. (These standards are discussed in Attachment 2.) The draft report and the process that produced it demonstrate that the audit team failed to meet these requirements. OECA strongly disagrees with the characterization of the NEIC's abilities as described in the title of the draft report, *Staffing Constraints, Safety and Health Concerns at EPA's National Enforcement Investigations Center May Compromise Ability to Achieve Mission*. At best, the report describes a purely speculative assertion that challenges facing NEIC may (emphasis added) compromise its ability to achieve its mission. The OIG seems to base many of its conclusions on employee assertions or accusations which are not supported by facts, and nowhere does the report indicate specific instances where NEIC was actually incapable of performing its essential mission in support of the Agency's critical enforcement work as suggested by the report's title. NEIC has continued to successfully perform its mission-critical work to perform complex investigations and support case work in criminal and civil enforcement. NEIC completed 79 projects in FY 2018, 80 projects in FY 2019, and 71 projects in FY 2020 (despite the challenges of the coronavirus).

Further, to continue to achieve such strong results, OECA has taken steps over the past five years to improve the effectiveness and efficiency of NEIC's operations.

- Between FY 2018 and FY 2020, NEIC achieved a 43% reduction in days to complete a criminal project (91.4 day average to 52.3 day average). During this time period, NEIC achieved a 93.6% increase in criminal projects completed within 60 days.
- Between FY 2018 and FY 2020, NEIC achieved a 48% reduction in days to complete a civil project (106.1 day average to 55.2 day average). During this time period, NEIC achieved a 126% increase in civil projects completed within 60 days.

Although the audit team was provided with detailed information about improvements in the management of NEIC operations, the report fails to reference or discuss these improvements, adding to OECA's concerns about the fairness and objectivity of the report.

### **Unsubstantiated Allegations of Reprisals**

The OIG report alleges that there is a retaliatory atmosphere at NEIC, yet the report provides no specific examples of actual retaliation or reprisals occurring at NEIC. OCEFT Director Henry Barnet routinely conducts exit interviews with departing employees, including those from NEIC. In each of these discussions, departing employees – who would no longer be a part of the Agency and would therefore be beyond the reach of any alleged reprisals – failed to provide any corroborating evidence of the alleged atmosphere of reprisals at NEIC or OCEFT as a whole. While concerns were raised about their unhappiness with changes at NEIC, which have focused on improved laboratory results and programmatic accountability by everyone at NEIC, no one provided any actionable examples that OCEFT/NEIC management could address.

Any allegation of a retaliatory atmosphere in OECA is of great concern to OECA management. Accordingly, in an attempt to better understand the issues being raised by the OIG in their discussion draft report provided to OECA in late 2020, OCEFT Director Barnet reached out to the audit team in January 2021 to ask for examples, without asking for attribution to any particular employee, of retaliation or a retaliatory atmosphere. Director Barnet was deeply concerned by the allegations, and to establish a sufficient basis to address them immediately, he asked the audit team for specific facts or a credible example. The OIG audit team declined to provide any examples citing privacy for the employees. In an email to Director Barnet, the OIG stated:

*You requested the OIG share specific examples of reprisal that were shared with the OIG by OCEFT/NEIC employees during this audit without disclosing the name or identifying information of the OCEFT employees involved. We reviewed the information and records of interviews etc., and are unable to provide the information without also raising concern on the disclosure of identifying information given the specifics. While some staff stated that they experienced and/or witnessed reprisal from management, **our audit did not specifically include a review of reprisal.** (emphasis added).<sup>1</sup>*

OCEFT management agrees that some NEIC staff members have been displeased with some aspects of management direction over the past several years. The management actions and direction taken at NEIC were not intended as retaliation or to create the fear of retaliation. They were undertaken to address operational concerns, personnel issues, and the need for greater accountability. There seems to be a continuing misunderstanding by some members of the staff of the difference between reprisals and reasonable management expectations of accountability. OCEFT provided examples demonstrating this misunderstanding to OIG during the course of the audit (some of which are restated, below), but those examples are not included in the draft report. OECA management strongly disagrees with assertions of retaliation. In fact, as recently as February 25, 2021, a staff member at an all hands meeting at NEIC acknowledged while discussing the 60-day goal<sup>2</sup> that while no one has gotten in trouble for frequently missing deadlines, but that just having a deadline in and of itself creates unwarranted pressure on staff.

We believe that the draft report in reaching its conclusion that a retaliatory atmosphere exists fails to provide a full assessment of the information that the OIG was presented by both staff and management. The report does not explain why the OIG failed to include the numerous facts and counterpoints provided by OECA management, as well as relevant and critical information provided to the audit team by the Agency's Labor and Employee Relations Division, as discussed in more detail below.

OCEFT management is aware that NEIC staff statements about "reprisals" or "retaliation" continue to circulate and has tried to address them, although doing so is complicated by our inability to share details of disciplinary actions that have occurred. However, to be clear, there have been no disciplinary actions involving reporting health and safety issues or missing the 60-day goals. Not one staff member nor anyone from the OIG provided a single example of actual retaliation. In the course of the audit, OCEFT management provided the audit team with information relevant to these allegations. For example, because the OIG alleges staff fear retaliation if they report a health and safety violation, OCEFT management provided the OIG with all health and safety reports. OIG could have crosswalked all health and safety violation reports with all records of disciplinary actions and see there is absolutely no correlation. There is no indication that the OIG did such an analysis. Not a single employee has been disciplined for missing any timeliness goal or measure, and our disciplinary record confirms that. Nevertheless, the OIG's draft report includes numerous unsubstantiated staff statements but does not include the statements and other information provided by management that counter these staff statements. OECA is deeply concerned that the unbalanced and incomplete record presented in the draft report gives credence to a false narrative, and if this deficiency is not addressed in the final report, the

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<sup>1</sup> Email response from Patrick Gilbride, Director, Environmental Research Programs Directorate, Office of Evaluation, dated 2/23/21, to OCEFT Director Henry Barnet regarding his 1/29/21 request for specific examples of retaliation or reprisals by management against NEIC staff.

<sup>2</sup> The 60-day goal refers to two internal NEIC performance goals. The first goal is to increase the percentage of criminal projects completed within 60 days of the receipt of samples by NEIC, or completion of field work for projects where there is no laboratory analysis, from 50% to 70% over FY 2021. The second goal is to ensure that 75% of civil inspection reports are timely completed and sent to the Regional office within 60 days of inspection.

report will be harmful to NEIC's culture, morale, and ability to meet its mission.

### **Needed Changes to the NEIC Culture**

Despite OCEFT management discussing it as a management priority, and, in our view, an important aspect of the audit, the draft report gives little attention to the much-needed culture changes required at NEIC. In the last several years, OECA/OCEFT management became aware of serious issues with the culture at NEIC. Previous managers provided limited oversight and did not hold staff accountable and staff, in general, exercised much more autonomy over their workload and deadlines. While NEIC was able to maintain its scientific reputation and standards, there had been challenges, such as meeting goals related to report timeliness and customer communications.

New management was brought into NEIC in 2017 with a focus on responding to these customer service issues. New management built on the scientific successes of the past and focused on core management responsibilities such as setting priorities, creating project timelines, holding staff accountable for grade level appropriate performance, and addressing conduct issues. (See recent improved timeliness information, above.)

NEIC provided the OIG with every recent conduct and performance action to demonstrate that management was focusing on specific incidents of misconduct and poor performance. The OIG also received comprehensive information on every action from EPA's Labor and Employee Relations Division. None of this information was accounted for in the OIG report. Of course, management is not able to openly discuss conduct and performance related matters with all staff and, therefore, staff perceptions on what may actually be occurring cannot easily be corrected or clarified. Nevertheless, despite having access to the full disciplinary record, the audit team included numerous staff statements even though they were inconsistent with the facts in the disciplinary record. As such, we remain concerned that the draft report presents an incomplete picture of what the OIG was provided, and as such, the report is unbalanced. If the draft report is finalized without substantial changes, it would undermine management's ability to continue with much-needed culture change and ability to achieve its mission.

OCEFT and NEIC management have spent significant time listening to staff concerns and suggestions and made changes where appropriate<sup>3</sup>. Some very good issues were raised, and management took steps to address them, such as holding more routine all hands and branch meetings to ensure consistent communication, promotion of inter-branch cooperation, and transparency of priorities through the development of a Center-wide business plan (into which staff had direct input). However, we also received some feedback, including requests and assertions that, coming from federal employees, were simply astonishing. The following are some of the statements we have heard from multiple staff members when OCEFT and NEIC management have sought to understand staff concerns. Given the nature of the statements, management could not agree with or implement the following:

- A staff member said they believe personal relationships at work are more important than accomplishing the mission.
- When asked for examples of where retaliation has occurred so that it can be addressed, a staff member stated that weekly huddles as part of the EPA LEAN Management System are retaliatory because staff should not have to provide information on the status of their project.

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<sup>3</sup> NEIC Director Canzler provided the OIG information on these Employee Viewpoint Survey listening sessions and provided them via email to the audit team on August 24, 2020.

- A staff member said that it is retaliation to go to training (even though the training was required to better support execution of their duties).
- A staff member stated that it is retaliation for first- and second-line managers to set priorities and provide oversight of staff performance.
- A staff member stated that, because of years of service, more tenured employees do not need supervision, and supervisory oversight is, therefore, retribution or reprisal.
- A staff member said they think having deadlines is a form of retaliation, although they acknowledged that no one has gotten in trouble for frequently missing deadlines, simply having a deadline in and of itself is pressure on staff.
- A staff member said it is unfair that current management has cut back all of the social engagements and parties on official time that past management used to allow.

All of these examples of staff comments and perceptions (in addition to others) were provided to the OIG in interviews with OCEFT and NEIC management. These comments do not represent the work ethic and professionalism of every NEIC employee; however, they are indicative of the culture that NEIC management seeks to change. We are disappointed that these statements, which we believe are critical in weighing the credibility of staff statements about retaliation or a retaliatory atmosphere, are omitted from the draft report. We believe that the omission of these statements, and other statements made by management during the course of the audit, render the draft report unbalanced and support our concern that the audit team was biased in conducting its analysis and drafting its report. Our concerns are deepened by the fact that we presented all of these issues in our response to the discussion draft, but the more recent draft report included no substantive changes or responses to what we provided. Our concerns about bias are heightened by the denial to meet with the OIG prior to submitting this response to discuss the comments we provided on the discussion draft and other documented indications of bias of which we have become aware.

### **In Conclusion**

OECA and OCEFT senior leadership have complete faith and confidence in the abilities and actions taken by NEIC Director Erica Canzler, NEIC Deputy Director Francisco Cruz, and their management team. It is almost impossible for any organization to address concerns if no specific facts or credible, actionable allegations are identified. OECA is deeply troubled that, throughout the report, unsubstantiated staff statements are used by the OIG, unfairly impugning the professionalism and character of NEIC management.

Again, OECA appreciates the opportunity to respond to the draft report. If you have further questions, please contact Gwendolyn Spriggs, OECA's Audit Follow Up Coordinator, at [spriggs.gwendolyn@epa.gov](mailto:spriggs.gwendolyn@epa.gov).

### Attachments

Attachment 1 to this response provides a more detailed list of concerns that OECA has with the subject report, arranged by chapter as well as specifics on information provided to the OIG but not included in the report.

Attachment 2 outlines OECA's concerns with the OIG's failure to follow government auditing standards.

Attachment 3 is the listing of the report's recommendations and OECA's response to each.

# ATTACHMENT 1 - OECA's Concerns with the Subject Report by Chapter

## Chapter 1: Introduction - Scope and Methodology

At pages 7-8, the draft report states:

*We conducted our performance audit from February 2020 to February 2021. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.*

OECA has a number of concerns with the OIG's methodology; specifically, it is not clear that this report investigated, considered, or included any information from other than a handful of people who are displeased with efforts to institute baseline accountability. If that is so, then this limitation should be clearly stated in the report.

On page 8, the report indicates the OIG interviewed 61 percent of all NEIC employees. However, given that several key NEIC current and former staff members were not interviewed, including a former Deputy Director who also served as Laboratory Branch Chief, we believe the OIG did not acquire all the appropriate evidence to provide a reasonable basis for its findings, particularly given the magnitude and import of the allegations in the draft report. We are also aware that information contrary to the findings and allegations in the report was provided during interviews conducted by the audit team; however, that information is not included in the draft report.

Further, on issues related to organizational climate or culture, many of the allegations being made are unsubstantiated by facts yet are represented as factual conclusions.

The report at page 9 also states that:

*(t)he OIG did not verify every staff concern identified during our interviews, though we present some concerns that are supported by documentary or other evidence demonstrating that there is a reasonable basis for the concern.*

This statement is at the core of the concerns OECA raised in response to the discussion draft and reiterates here in response to the draft report the subject audit. While the report states that the OIG "verified" only a subset of the issues identified in the report, the report includes a number of unsubstantiated concerns with no real ability for OECA to refute, or more importantly, address.

## Chapter 2: NEIC Has Addressed Nonconformities from Quality Assurance Audits; Tracking of Some Issues Should be Improved

The report states that NEIC has addressed nonconformities with accreditation requirements identified from quality assurance (QA) audits, action items from management reviews, and eight identified customer complaints between FY 2014 and FY 2019. Specifically, the draft report states at page 12:

*NEIC is addressing high-priority issues, such as nonconformities identified in QA audits. We found that NEIC should improve the tracking and documentation for secondary issues, such as concerns, observations, comments, and opportunities for improvement from QA audits as well as items from other sources, like customer complaints. Better tracking will improve NEIC's ability to respond to repeat findings, identify trends, make more informed decisions on whether there should be actions to address, and facilitate knowledge transfer among NEIC staff and management.*

NEIC tracks issues from past audits. It should also be noted that NEIC consistently maintained full ISO 17025 accreditation and provided the audit team extensive documentation.

Further, the OIG report states at page 10:

*NEIC's ISO/IEC 17025 accreditation requires internal QA audits as well as external QA audits from an accreditation body. We reviewed 25 internal and external QA audits conducted between FY14-19. These audits identified 38 nonconformities, which is the absence of or the failure to implement and maintain an accreditation requirement. Examples of nonconformities include no records of equipment calibration verification, lack of information in data packages to enable tests to be repeated under original test conditions, and missing information from the project file. We found all 38 nonconformities were addressed and documented as required by NEIC's QMS.*

As the OIG notes, all 38 nonconformities were addressed and documented as required by the QMS and in accordance with its ISO/IEC accreditation. OECA believes that this demonstrates the robustness of the current tracking system; therefore, no additional resources need to be committed to this effort.

We also agree with the conclusion the OIG reaches in this chapter that "NEIC is addressing high priority issues, such as nonconformities identified in QA audits."

### **Chapter 3: PIQA Did Not Follow Up on Inspection and Some Issues Remain Unresolved**

The title of this chapter mischaracterizes the role of PIQA within OCEFT. PIQA's role is to gather facts as part of an inspection or investigation. It then prepares a report for use by management in determining actions in response to PIQA's findings. It is not the role of PIQA to specifically take action on recommendations presented to management, including routinely self-initiating follow-up inquiries. Rather, that is the responsibility of the OCEFT Office Director and the responsible management.

As the report indicates, between October 2014 and March 2020, PIQA conducted one inspection (in 2017) and two investigations (in 2017 and 2020) of NEIC. The investigations were requested by OCEFT management.

In 2016, NEIC conducted a required self-inspection in advance of the PIQA inspection. Per the report, OIG identified three concerns that merited follow-up from NEIC's 2016 self-inspection: (1) lack of adequate staffing to meet Agency goals; (2) hiring system that has been "incredibly slow and is not helpful in recruiting the technical expertise needed at NEIC;" (3) importing technical data from the field due to difficulties with the Agency's firewall. The OIG draft report states that concerns (1) and (2) remain issues. As NEIC explained, the issue is not so much the agency hiring process but rather the challenge of budgetary constraints. NEIC is funded through the Agency's Science and Technology appropriation, and under appropriations rules, other OECA and OCEFT resources are not readily available to address NEIC needs. OCEFT and OECA press for appropriate resources, including staff,

during the annual budget process and will continue to do so. OCEFT has also worked to improve its internal hiring processes, to shorten the length of time required to bring on new staff but would note that many parts of the hiring process are outside of OCEFT and OECA's direct control. The report states that concern (3) regarding technical difficulties with Agency's firewall appears to be largely resolved.

In response to the 2017 PIQA inspection report, NEIC developed an Actionable Items Report responding to all eight PIQA recommendations. This report included corrective actions and an implementation date with responsible parties identified. While NEIC implemented corrective actions to address PIQA's observations, according to the OIG three of PIQA's observations persist, and the report states that the corrective actions did not effectively address these three observations. These three observations were:

1. There is a general lack of confidence and trust in the management team.

The report does not make clear that during the inspection that PIQA finalized in 2017, Director Canzler had only recently been assigned as the new Acting Director and at the time of inspection, she was reviewed favorably overall by NEIC staff. Further, in that inspection, staff indicated that inconsistency among NEIC managers was a significant concern in 2016. Since 2016, the entire NEIC management team except for one (a manager who is now in a different management position) has changed. Therefore, the observations made by PIQA at that time about managers cannot be imputed to the current management team.

The new NEIC management team has taken a number of actions to address the confidence/trust concern. This includes, among other things, weekly meetings with new supervisors outside of routine management meetings to support and mentor new supervisors as they come on board. In order to provide leadership opportunities to staff, NEIC has provided multiple detail opportunities to enable staff to serve in a temporary management positions. NEIC senior management has encouraged NEIC managers to engage in the OECA mentoring program and to hold regular Branch and All Hands meetings to ensure transparent communication.

2. Branches appear to have a significant amount of administrative duties without adequate support.

OECA acknowledges that like many parts of the Agency, overall numbers of administrative staff have declined as resource constraints have become more pronounced and many administrative functions have become more automated. While the statement is correct, the OIG report does not take into consideration that while staff time devoted to projects may have decreased due to additional administrative duties, the time to complete projects has significantly decreased as well. In addition, technology has advanced to the point where many administrative functions can be done quite efficiently by staff themselves. This includes not only NEIC staff but our criminal investigators, attorneys, managers, etc.

3. The waste disposal officer recently departed and another person was not identified to take over.

The draft report states on page 17 that NEIC management said that waste disposal officer duties were transferred to three staff, that the health and safety officer at NEIC has taken a more active role in waste management, and that procedures have been updated based on the transfer of duties. The OIG concluded, again at page 17, that the "[d]istribution of waste control officer duties, that is, multiple people involved with no clear lead, and workload constraints due to staff attrition were contributing factors to the hazardous waste violations identified during the 2020 inspection" which resulted in a fine from the Colorado Department of Public Health and Environment (CDPHE).

This conclusion is wrong and disregards the information provided to OIG. While there was a short period of time where waste control officer duties were shared among three staff, that had no bearing on the CDPHE audit or its finding. At least two years prior to the CDPHE audit, the waste control officer position was assigned to one experienced and trained employee at NEIC. In addition, this employee's supervisor was provided additional RCRA training to ensure he could provide proper oversight. The negligent performance of duties that led to the CDHPE fine was immediately addressed and corrected by management.

#### **Chapter 4: Safety and Health Issues Persist, Though Steps Have Been Taken to Address Them**

OECA and NEIC management acknowledge that some required Safety and Health Management System audits were not performed annually prior to 2017. The audits did not occur and we do not know why because all managers and employees with those responsibilities have left NEIC and no documentation from that time period exists to explain why. In the period of construction on the lab facility during the co-location merger with EPA Region 8's lab, some of these audits were temporarily suspended as it was impracticable to conduct audits due to the scope and scale of the construction. OECA is committed to ensuring that all required audits are done in a timely manner. All required internal audits and management reviews were completed in 2020, and we anticipate the same to be the case for 2021.

However, the report cites employee statements that management cared little for the safety of our employees and that the employees themselves were not able to raise health and safety issues, as the OIG highlights with staff comments on page 24. These statements are simply not true, and the OIG provides no information to substantiate them. Management provided examples in their interviews with the OIG that demonstrate they take safety very seriously. Furthermore, management has consistently led monthly walk-throughs in the laboratory to ensure a safe and healthy work environment. As with other parts of the draft report, there is no indication that these examples were taken into consideration in formulating the draft reports findings and recommendations. Secondly, if employees have concerns about health and safety, there are many ways for them to raise them, including reporting claims to the NEIC RCRA media lead; NEIC management at any level; their Union representatives; the OECA, OCEFT, or NEIC online comment boxes, which include an option for anonymity; or OSHA. We are not aware that any of these avenues were ever pursued to raise health and safety concerns.

Regarding staff allegations that safety is not a priority of NEIC management and that staff fear reprisals for reporting safety issues, OECA remains deeply concerned that such statements are included in the draft report without proper context or corroborating evidence of their veracity. Once again, the report does not include a single piece of evidence of reprisals for reporting safety incidents to management, and NEIC management has not taken any disciplinary actions against any employee for reporting a safety incident. NEIC management provided specific facts to the audit team that counter these assertions, including that health and safety incident reports that were filed by staff without any reprisal. In addition, management routinely reminds staff at Branch and All Hands meetings of the importance of following all health and safety procedures.

Management has taken actions for employee misconduct resulting in critical health and safety violations. But to be clear, those were not in response to reporting the incident but for failure to follow procedures or other conduct issues which caused the incident.

As management is not allowed to discuss conduct or discipline matters with other employees, the staff statements are being made without management being able to provide full context. As such, their

inclusion in the draft report is harmful to NEIC's ability to effectively manage its employees. OECA and NEIC management only take disciplinary actions for legitimate, non-discriminatory reasons and management works closely with its Labor and Employee Relations advisors and, as appropriate, Office of General Counsel attorneys, on each matter.

The report also states at page 24-25 that:

*Furthermore, safety and health and waste management are now incorporated into the annual performance reviews for applicable staff and, according to the director, continue to be management priorities.*

In fact, applicable employee PARS already included this information (as opposed to the OIG's insinuation that it was a late reaction by NEIC management) as it was and continues to be a priority of management. Such documents were provided to the OIG.

As the OIG has noted, NEIC has had administrative challenges with its health and safety program. However, the lack of sufficient resources and staff misconduct are the root of those issues, not a disregard for health and safety on the part of management. OECA has provided a great deal of evidence indicating management puts a very high priority on health and safety issues, and just as importantly took no action against any employee merely for reporting their concerns.<sup>6</sup>

Many staff statements involve the issue of nonfunctioning vent hoods as a health and safety concern. As NEIC management has stated, no employees were ever put in a position to use a nonfunctioning vent hood. In fact, employees were repeatedly directed not to conduct laboratory work using the nonfunctioning vent hoods. The fact that employees were inconvenienced by having to use a reduced number of hoods is not a health and safety issue. We believe this is yet another example of the incomplete presentation of an issue and bias on the part of the audit team.

## **Chapter 5: NEIC Faces Severe Staffing Shortage Due to Work Environment, Attrition, Difficulty Hiring**

The draft report reflects the issues with staffing shortages impacting NEIC. As stated in the report at page 33:

*Since FY 2014, NEIC has lost 27 full-time employees representing a net reduction of 32 percent from 2014 levels... In comparison, the EPA's workforce declined by 8 percent over this same period.*

NEIC's budget is largely comprised of the S&T appropriation. This is a very small portion of the Agency's overall budget, and most every dollar of S&T received by OECA goes towards NEIC. The issue is that the limited amount of S&T funding provided to OECA, and OECA's traditional high FTE costs, means that any reductions from the Agency in S&T have a disproportionate impact on our FTE as there are very few extramural dollars from which OECA can absorb such reductions. OECA has been working with the Agency to try to obtain more S&T resources to address these reductions over the last seven years, however, OECA cannot substitute other types of funding to address the shortfalls.

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<sup>6</sup> This information was provided to the OIG by NEIC management on SharePoint on March 25, 2020, and May 20, 2020.

While it is true that NEIC has endured a large number of staff separations, OECA disagrees with the characterization in this part of the report that such departures are a direct result of the “work environment” at NEIC. Specifically, the report says at page 38:

*Both current and former employees expressed fear of retaliation, the use of reprimands by senior management, a lack of trust in senior management, and low staff morale as reasons for leaving.*

As mentioned repeatedly in this response, the OIG fails to identify a single instance of such retaliation by management. Any reprimands issued by management are done in full accordance with Agency policy, and with the involvement of the Labor and Employee Relations staff in the Office of Human Resources and, as necessary, with the Office of General Counsel. As discussed earlier in this response, OCEFT management believes that there seems to be a continuing misunderstanding by some members of the staff of the difference between reprisals and reasonable management expectations of accountability.

The overall discussion in the report regarding resource needs fails to acknowledge the extensive workload analysis which has been completed by NEIC management. NEIC management provided the OIG a business case that demonstrates its identified needs based on data as well as several branch succession plans. There are numerous additional data points, such as the annual civil project solicitation plans<sup>7</sup>, that demonstrate the number of requests by the Regions and HQs versus what NEIC is able to staff. Based on the draft report, it appears that the OIG did not consider the data provided.

The report reaches sweeping conclusions based on relatively few interviews with staff. For example, the report states at page 37:

*Of the current staff-level employees we interviewed, 15 of 26 (58 percent) shared their intent to leave NEIC as soon as possible, that is, by actively looking for work elsewhere or taking early retirement. Of these employees, 14 of 15 (93 percent) indicated the work environment as their reason for intending to leave.*

While not calling into question that this is what these staff said to the OIG, the numbers presented create a misleading impression of the magnitude of dissatisfaction at NEIC. Additionally, anecdotal information from various members of NEIC suggests that the range of content covered in interviews varied greatly, further calling into question the validity of conclusions drawn in the draft report.

OECA recognizes that the issue of having a timeliness measure, whether for completing criminal projects or civil inspection reports, has created concerns by staff at NEIC. The report does not clarify that the 60-day goal was established as part of an Agency-wide continuous improvement effort and has been viewed very positively by NEIC’s customers, so much so that, for the first time in 10 years, the OCEFT Criminal Investigation Division has reported that it is satisfied with the support they receive from NEIC (a key customer not interviewed by OIG).

Staff believe that the 60-day goal puts undue pressure to quickly complete, oftentimes, complex projects. However, OECA, OCEFT and NEIC senior management have all stated the 60-day is a **goal and the integrity of the work remains of paramount importance**. NEIC management has always granted flexibility on timeliness. NEIC management has stated that the 60-day goal helped to more promptly address environmental harm and respond to customer complaints. Before this goal was put in

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<sup>7</sup> These documents were emailed by the branch chiefs to the audit team on September 3 and 4, 2020.

place, such reports were taking an unreasonable 254 days<sup>8</sup> on average to complete. Efficiency and customer satisfaction have both increased as a result of implementing the 60-day goal.

As to the allegation included in the draft report that staff face “reprisals” for not meeting the 60-day goal, we reiterate that not a single employee has been disciplined for missing the goal for civil reports or criminal projects, and our disciplinary record confirms that. Numerous managers provided information showing that the majority of NEIC criminal reports have, in fact, missed the 60-day goal and not a single staff member has been reprimanded. Yet this information, which presents a more accurate, balanced view, is not included in the report.

The OIG report does not take into consideration the efforts management is undertaking to change the culture of NEIC to one of high performance and greater accountability. There may be staff who will choose not to accept this new paradigm, and we recognize that NEIC management will have little ability to address their concerns. By way of example of the staff expectations that management is attempting to address, on more than one occasion, some NEIC staff have suggested that NEIC hold “Movie Thursdays” where staff would gather to watch a movie during normal duty hours and while on duty status. This is an inappropriate request for federal workers to make and one which NEIC management denied. NEIC staff have also asked for more social events while on government time. The new NEIC management has, consistent with practices of many offices across EPA, rightly focused these types of events to a holiday party at the end of the year and a summer picnic. Rejecting staff requests for additional “party times” is well within management’s discretion. These are examples of the organizational climate and culture that NEIC management is trying to address, and unfortunately some staff will not be happy with the results, even where they are an appropriate response to the operational needs of the organization. During one listening session with NEIC management and the OCEFT Deputy Director to discuss EVS results, one NEIC employee stated publicly words to the effect that they “would prioritize personal workplace relationships over completion of the mission of NEIC.” While OECA management values interpersonal relationships among staff, it cannot come at the expense of the mission.

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<sup>8</sup> The 254-day timeframe was developed during a Kaizen event in which staff mapped the timeframe of their workflow and identified opportunities to reduce it.

## **Attachment 2: OECA's Concerns About How the Generally Accepted Government Auditing Standards Were Not Followed**

In comments provided to OIG on the initial discussion draft of the subject report, OECA stated that this report does not fully provide factually accurate information in accordance with the standards for conducting audits as established by the Comptroller General of the United States, and as outlined in the April 2, 2020, memorandum from Kathlene Butler, Acting Assistant Inspector General Office of Audit and Evaluation, Office of Inspector General Audit and Evaluation Processes. These standards are based on the Government Auditing Standards, which are also referred to as the generally accepted government auditing standards, known as GAGAS, or the "Yellow Book." Further, the OIG also stated that it follows the standards for evaluations as established by the Council of the Inspectors General on Integrity and Efficiency and are referred to as the "Blue Book." OECA strongly feels that this audit did not adequately follow the "Yellow Book" and "Blue Book" standards and guidance. Specifically, the GAO Audit Manual provides, at page 179:

- 8.90 Auditors must obtain sufficient, appropriate evidence to provide a reasonable basis for addressing the audit objectives and supporting their findings and conclusions.
- 8.91 In assessing the appropriateness of evidence, auditors should assess whether the evidence is relevant, valid, and reliable.
- 8.92 In determining the sufficiency of evidence, auditors should determine whether enough appropriate evidence exists to address the audit objectives and support the findings and conclusions to the extent that would persuade a knowledgeable person that the findings are reasonable.
- 8.93 When auditors use information provided by officials of the audited entity as part of their evidence, they should determine what the officials of the audited entity or other auditors did to obtain assurance over the reliability of the information.
- 8.94 Auditors should evaluate the objectivity, credibility, and reliability of testimonial evidence.

The following are additional elements from the "Yellow Book" which OECA does not feel were followed in the course of this audit based on our review of the draft report:

- "3.19 Auditors and audit organizations should avoid situations that could lead reasonable and informed third parties to conclude that the auditors and audit organizations are not independent and thus are not capable of exercising objective and impartial judgment on all issues associated with conducting the engagement and reporting on the work."

OECA believes that the current draft report could be deemed as not being independent by a reasonable and informed third party given the number of unsubstantiated claims in the document, and the number of management statements and other information provided to the audit team during the course of the audit that are not included in the draft report.

- "3.110 Professional judgment includes exercising reasonable care and professional skepticism. Reasonable care includes acting diligently in accordance with applicable professional standards and ethical principles. Attributes of professional skepticism include a questioning mind, awareness of conditions that may indicate possible misstatement owing to error or fraud, and a critical assessment of evidence. Professional skepticism includes being alert to, for example, evidence that contradicts other evidence obtained or information that brings into question the reliability of documents or responses to inquiries to be used as evidence. Further, it includes a mindset in which auditors assume that management is neither dishonest nor of

unquestioned honesty. Auditors may accept records and documents as genuine unless they have reason to believe the contrary. Auditors may consider documenting procedures undertaken to support their application of professional skepticism in highly judgmental or subjective areas under audit.”

Again, OECA believes that the auditors do not appear to exercise sufficient professional skepticism of staff statements given the availability of evidence that contradicts those statements.

- “9.17 The auditor may use the report quality elements of accurate, objective, complete, convincing, clear, concise, and timely when developing and writing the audit report as the subject permits.
  - a. Accurate: An accurate report is supported by sufficient, appropriate evidence with key facts, figures, and findings being traceable to the audit evidence. Reports that are fact-based, with a clear statement of sources, methods, and assumptions so that report users can judge how much weight to give the evidence reported, assist in achieving accuracy. Disclosing data limitations and other disclosures also contribute to producing more accurate audit reports. Reports also are more accurate when the findings are presented in the broader context of the issue. One way to help the audit organization prepare accurate audit reports is to use a quality control process such as referencing. Referencing is a process in which an experienced auditor who is independent of the audit checks that statements of facts, figures, and dates are correctly reported; the findings are adequately supported by the evidence in the audit documentation; and the conclusions and recommendations flow logically from the evidence.”

OECA is concerned that the audit team does not disclose data limitations and other disclosures, including not interviewing several current and former staff members that were identified during interviews, and not reviewing pertinent personnel files that would refute many of the unsubstantiated claims in the report. In addition, when presented with contrary or countervailing evidence, the OIG neglected to include it in the report.

- “9.18 In the audit report, auditors should present sufficient, appropriate evidence to support the findings and conclusions in relation to the audit objectives. Auditors should provide recommendations for corrective action if findings are significant within the context of the audit objectives.”

OECA believes the audit team fails to meet this requirement as they do not present enough appropriate evidence to support their findings and the resulting recommendations, given the quantity of unsubstantiated claims relied upon in the document.

OECA strongly believes that employee comments are treated as fact without any evidentiary support to include them in the audit as factual statements. NEIC and other management officials (including Labor and Employee Relations Division management), provided a myriad of facts and documents in response to these unsubstantiated allegations, yet the audit does not include these responses to counter the anonymous allegations. This is contrary to the “Yellow Book” standards and the evidence-based standards detailed above. This further complicates OECA’s ability to respond to the findings and recommendations, as the report is not providing sufficient information to aid in the resolution of the issues contained in the report; these comments amount to allegations or accusations without supporting facts.

**ATTACHMENT 3- OECA RESPONSES TO SPECIFIC OIG RECOMMENDATIONS**

REC. NO.	PAGE #	OIG RECOMMENDATION	STATUS <sup>9</sup>	OECA RESPONSE	PLANNED COMPLETION DATE
1	12	Direct the National Enforcement Investigations Center to develop and implement a formal procedure and tracking mechanism (such as a consolidated spreadsheet) for National Enforcement Investigations Center decisions related to observations, comments, concerns, and opportunities for improvement identified from audits; management review action items that are not tracked anywhere else; and customer complaints.	C	<b>OECA disagrees with the recommendation to develop a tracking mechanism, as NEIC is already properly tracking the identified issues.</b> As the report itself states, with regard to the eight customer complaints NEIC received from FY 2014 to FY 2019, NEIC adequately addressed all eight. Likewise, in regard to the 25 internal and external QA audits conducted between FY 2014 to FY 2019 and specifically the 38 nonconformities found therein, the IG found all 38 nonconformities were addressed and documented as required by NEIC’s quality management system. Therefore, the above-cited evidence illustrates that NEIC is properly tracking and managing these concerns and the report failed to present any evidence to the contrary. In addition, this proposed tracking mechanism is not required by NEIC’s ISO 17025 accreditation.	Ongoing as NEIC will continue to utilize its existing tracking system.
2	20	Direct the Office of Criminal Enforcement, Forensics, and Training’s Professional Integrity and Quality Assurance unit to develop and implement a follow-up process for inspection findings,	C	<b>OECA agrees that follow-up on inspection findings is important.</b> OCEFT Director works with the responsible management to follow up on the effectiveness of corrective actions as necessary. PIQA has updated its inspection	Completed

<sup>9</sup> C = Corrective action completed.  
R = Recommendation resolved with corrective action pending.  
U = Recommendation unresolved with resolution efforts in progress.

		including determining and documenting whether corrective actions effectively address findings.		manual to follow up on high-priority action items to ensure items are completed.	
3	32	Conduct a follow-up review of hazardous waste management at the National Enforcement Investigations Center to determine if it is complying with relevant statutes and regulations and verify internal controls are in place to ensure future compliance.	C	<b>OECA agrees with this recommendation and has already implemented it.</b> NEIC has put internal controls in place and is conducting quarterly inspections to ensure compliance with relevant statutes and regulations. This information was provided to the OIG.	Completed
4	32	Provide annual training on safety incident reporting procedures to all National Enforcement Investigations Center employees and managers, including training on preventive or corrective actions and related root-cause analysis.	C	<b>OECA agrees.</b> Health and Safety training is essential, and NEIC completes this training annually. NEIC will consider how best to cover preventive or corrective actions and related root-cause analysis.	10/31/21
5	32	Develop and incorporate metrics that address safety and health issues and staff concerns into National Enforcement Investigations Center senior management performance evaluations, such as collecting anonymous feedback from all staff annually.	C	<b>OECA agrees. Health and Safety is a core consideration at NEIC.</b> We will review senior manager performance standards to ensure that their commitment to maintain a dedicated Health and Safety FTE and complete annual audits continues.	10/31/21
6	32	In coordination with the assistant administrator of Mission Support, verify that all laboratory hoods at the National Enforcement Investigations Center are operational and certified for use.	R	<b>OECA agrees and is currently working with OMS and GSA on this issue.</b> To date 21 of the 25 ventilation hoods within NEIC are certified and operational. OMS hired a third-party commissioning agent (Facility Dynamics Engineering) and chemical fume hood expert (Hoy Engineering) to review laboratory	9/30/21

				<p>ventilation and fume hood operation for all NEIC and R8 laboratories in building 25. The commissioning agent and fume hood expert worked onsite from November 2020 through January 2021 to set up the laboratory HVAC and fume hood air flows per the recent building renovations design intent. Once the systems were confirmed to be operating correctly, ASHRAE 110 fume hood certification was performed by third party (TSS &amp; 3Flow) for all fume hoods. All fume hoods passed the ASHRAE 110 certification with the exception of four polypropylene fume hoods and two biosafety cabinets requiring additional mechanical duct work repairs. In order to certify the remaining fume hoods and biosafety cabinets GSA is working with the contractor to perform the repairs. OMS anticipates remaining ASHRAE 110 certifications to complete by end of April 2021. OMS has the commissioning report and fume hood certification reports that can be made available upon request.</p>	
7	42	<p>Develop and implement a staffing plan for the Office of Criminal Enforcement, Forensics, and Training incorporating projections of National Enforcement Investigations Center workload based upon the number of Criminal Investigation Division agents, the needs of other EPA enforcement programs, and other factors.</p>	C	<p><b>OECA agrees and has developed a staffing plan.</b> Our staffing plan includes a workload analysis and succession plans. In addition, OECA performs position management based upon current onboards as well as projections for staffing.</p>	Completed

8	42	In coordination with the assistant administrator for Mission Support, develop a joint action plan for hiring new staff at the National Enforcement Investigations Center and promptly address delays in hiring.	C	<b>OECA agrees.</b> OECA has begun work with OMS and the Cincinnati Shared Service Center (SSC) to address the delays in hiring. The SSC is evaluating work processes and resource allocation in order to keep actions moving. Helpful strides in efficiency have already been made in this respect.	9/30/21
9	42	Develop and incorporate metrics on the National Enforcement Investigations Center work environment and culture into Office of Criminal Enforcement, Forensics, and Training senior management performance standards, such as results from the annual Federal Employee Viewpoint Survey, periodic culture audits, or other methods to measure progress.	C	<b>OECA disagrees.</b> The OCEFT Director and Deputy Director already committed to implement OECA's Equity, Diversity and Inclusion program, which includes a long list of efforts to make the workplace as welcoming as possible for all. Specifically, the senior managers committed to further strengthening OECA as an organization that appreciates and respects everyone, offers a welcoming work environment for all, shows no tolerance for racism, values equity and takes meaningful steps towards creating and maintaining a more diverse workforce. The program contains a system for measuring our success. OCEFT will continue to address the culture change at NEIC and will continue to solicit feedback and address concerns as appropriate.	
10	42	Develop and incorporate metrics that address work environment and culture into National Enforcement Investigations Center senior management performance standards.	C	<b>OECA disagrees.</b> The NEIC Director and Deputy Director already committed to implement the Equity, Diversity and Inclusion program, which includes a long list of efforts to make the workplace as welcoming as possible for all. Specifically, the senior managers committed to further strengthening OECA as an organization that appreciates and respects everyone, offers a welcoming work environment	

				for all, shows no tolerance for racism, values equity and takes meaningful steps towards creating and maintaining a more diverse workforce The program contains a system for measuring our success. NEIC management will continue to address the culture change at NEIC and will continue to solicit feedback and address concerns as appropriate.	
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## ***Distribution***

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