Establishing the Investigation Team
Criminal Investigator is authorized to obtain all information legally obtained in regulatory program.

Criminal Investigator must take steps to protect confidential information.
Criminal  Regulatory

May release criminal information only when:

- Needed to conduct a legitimate regulatory function;

- In accordance with specified department policy and law; and

- In US, only to protect public health and the environment.
Criminal → Regulatory

- Must protect identifying information (redaction option)

- Should prosecutor be involved in decision to release criminal information to regulatory side?
Role(s) of the Criminal Investigator
Role of the Criminal Investigator

- Official representative
- Witness of Fact
- Enforcement case developer
- Provider of enforcement presence
Inspection and Technical Support During a Criminal Investigation

- Always seek assistance and information from technical and regulatory staff.

- Sampling and analyses almost always required.

- Only properly trained personnel take samples, but the investigator MUST know chain of custody and all proper procedures are followed.
Inspection and Technical Support During a Criminal Investigation

- Criminal Investigator NEVER directs a regulatory inspection.

- Regulatory Inspector NEVER directs a criminal investigation.

- NEVER threaten a criminal investigation in a regulatory case.

- NEVER threaten a regulatory case in a criminal investigation.
Role(s) of the Inspector and Technical Experts
Role of the INSPECTOR

- Official representative
- Witness of Fact
- Enforcement case developer
- Provider of enforcement presence

- Technical educator
Role of the INSPECTOR

- Official representative
- Witness of Fact
- Enforcement case developer
- Provider of enforcement presence
- Technical educator

Technical authority
Investigations v. Inspections

- What is the difference?

- How does that change your role?
Professionalism

- Integrity and impartiality
- Conflict of interest
- Standards of conduct
Confidential Business Information
What Is Confidential?

- Proprietary data
- Chemical formulations
- Special process operations-special techniques
- Financial information
- Lists of customers
- Anything that might give another company a competitive advantage
Enforcement Confidentiality

- Pre-decisional (draft) documents
- Prejudicial information
- Internal deliberations
- Contrasts with transparent and open governance
Role(s) of the Prosecutor
The Prosecutor’s Responsibilities

- Represent the government in court and on all matters of law.
- Lead on all interactions with defense attorneys.
- Responsible for legal strategy and makes ultimate prosecutorial decisions.
- Resource for investigation team on all legal issues.
When to Interact With the Prosecutor

- Early and Often.
- Reasons:
  - Don’t want to waste resources on a case that will not be prosecuted.
  - Don’t want to ruin a good case by making an inadvertent legal or evidentiary decision.
  - Prosecutor may have some good advice on evidence that should be obtained early.
Selling the case to the prosecutor

- Be very prepared on the facts.
- Have a plan of action.
- You are selling not only this case, but your personal reputation and the program’s importance.
- Be aware that the prosecutor is probably not familiar with environmental cases.
- Provide a list of resources for the prosecutor.
- May need the support of a high-level supervisor, at least at first.
What is a Parallel Proceeding?

- Regulatory action proceeding at the same time as a criminal investigation.

- Examples:
  - Government monitored clean up;
  - Permit process; and
  - Civil or Administrative penalty action.