

the storage facility. If you collect a large incendiary device (a 32-ounce beer bottle/fire bomb) it won't fit in a one-gallon evidence can. How can you keep it from contaminating the surrounding area? How do you keep the surrounding area from contaminating the evidence? (Hint: don't break it to make it fit in a one gallon evidence can; check the definition of spoliation). The answer is to either isolate the intact bottle in a Kapak bag or a larger container, or ensure that all other surrounding items in the evidence storage facility are isolated in their containers. Of course, if you select the latter choice that means that you will lose ignitable liquid evidence on the exposed item. The best choice would be to isolate all items of evidence in the storage facility.

If a piece of evidence contains a suspected ignitable liquid, consider transferring a small quantity into a glass vial using a pipet. Make sure that the gasket in the cap of the vial is Teflon. With this sample, which is now an additional piece of evidence, you can dispose of the remainder of the liquid. I prefer to make the transfer while still on the fire scene. The benefits of this procedure become more obvious when you have recovered a five gallon can full of gasoline. Be knowledgeable about the laws that dictate how much hazardous material that you can legally store.

After the sample is collected, a safely conducted burn test can be documented with a small forced, so make sure that you have the ability to legally transport it. Most fire departments are allowed to transport under a hazardous waste variance (For example, in California, Emergency Response Incident Transporter, Section 66263.43, Title 22 of the California Code of Regulations). If you qualify for this variance you must also carry a copy of it in the vehicle and keep current shipping papers that describe the waste. Transport the hazardous waste in an approved safety can. Now, the variable for forced, so make sure that you have the ability to legally transport it. Most fire departments are allowed to transport under a hazardous waste variance (For example, in California, Emergency Response Incident Transporter, Section 66263.43, Title 22 of the California Code of Regulations). If you qualify for this variance you must also carry a copy of it in the vehicle and keep current shipping papers that describe the waste. Transport the hazardous waste in an approved safety can. Now, the variable for the transportation of hazardous waste is that if it is still of value as evidence and not to be disposed of, it is not considered waste and can then be transported. Keep in mind though, that if this approach is used to avoid disposing of your unwanted liquids, then the liquids are now accumulating in your evidence room. The issue of hazardous waste disposal is one of the costs of doing business. Don't cut corners.

CHAIN OF CUSTODY

To document the chain of custody, a system that works well for us is a 5" x 8" card (sample

above) for each piece of evidence with the pertinent information. This is kept in a chronological file in the evidence storage facility with a quick reference journal (sample above) that identifies the evidence and where it's located in the storage area. All evidence should remain in the storage facility until one of three events occurs:

THE EVIDENCE IS SENT TO A LABORATORY FOR ANALYSIS

Include the date and time of transfer from the evidence storage facility to the laboratory in the chain of custody documentation and obtain a receipt from the lab. Be sure to describe how the evidence is stored. For example, if you have a sealed glass vial of an ignitable liquid that is then placed in a one quart metal can, the lab needs to know that so they don't stick the gas chromatograph probe in the top of the quart can. Also describe what the evidence is and what test you want performed. When the laboratory is finished with the testing, log the evidence back into the evidence storage facility and update the chain of custody.

THE EVIDENCE IS USED IN COURT

At this point, the court retains custody of the evidence in most cases. Be sure to obtain a receipt and update the chain of custody. This could be the last you see of this evidence.

THE EVIDENCE IS DISPOSED OF

In arson evidence cases where no arrest is made one of the most important issues is following a consistent procedure for disposing of evidence. Is ninety days enough? Or six months? Whatever you decide, don't dispose of anything before the minimum time has passed. Is it possible that you may someday dispose of evidence that you will later wish you had kept? Yes, but space and manageability are an issue. Your local counsel may have advice. Ours recommended keeping evidence of an arson where no arrest is made for ninety days. Some agencies choose to hold through the expiration of the statute of limitations. In cases where an arrest is made, we were instructed to keep all evidence sixty days beyond the final day of the legal appeal process.

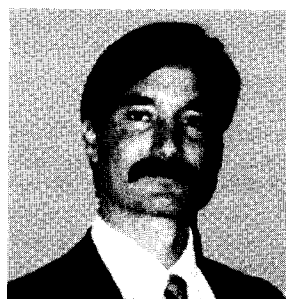
Of course there will be those cases that you feel you need to hold onto for various reasons, even when your standard operating procedure indicates that you can dispose of it. If you are adhering to an organized policy of storage and disposal, you should have a lot more space than you are used to, leaving plenty of room for the special cases that you want to hold longer. I'm not an advocate of randomly tossing all of my evidence, but I do like the feeling that what I have is current with my case load. Have you ever found an item of evidence in your storage area that no current investigator has any knowledge of? Take responsibility for the evidence that you collect and keep track of it once it's in your possession.

When it is time to dispose of evidence, again, be mindful of EPA regulations. If you emptied the excess liquids at the time of collection, most remaining evidence can go into the garbage. Be sure to remove the lids from the cans and try to remove the label. This will reduce the chances of someone finding it in the landfill and returning it to you. Also be aware of any necessary notifications that need to be made to insurance companies, the owners of the collected property or other interested parties. If there are interested parties, a notice sent fifteen days prior to disposal has proven adequate for us. Be sure to log the final disposition of the evidence in the chain of custody documentation.

CONCLUSION

With recent high profile criminal cases that focused on evidence collection procedures and the changes seen in fire investigations, it is imperative that the investigator has sound reasons for all aspects of an investigation. Evidence collection is often the key to the physical findings that we use to form an opinion on the origin and cause of a fire.

The days of a fire investigator having free reign to give opinions in the courtroom without challenge are most likely behind us. By using guides such as NFPA 921 and possessing written investigative policies that document the procedures we use during an investigation, we will be more prepared to justify our actions when questioned. Finally, what I have found to be true in my jurisdiction may not be so in yours. However, the issues are still the same. Do a little homework of your own to insure that you're doing the right thing. It will add to your credibility when you know the source of the information used to create a procedure that will stand up in court. ♦



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About the Author

Investigator Herrera is a seventeen year veteran of the San Diego Fire Department and has been a member of the Metro Arson Strike Team for nine years. In addition to an

IAAI CFI Certification, he has an AS Degree in Fire Science and is a licensed Private Investigator. Investigator Herrera is a member of the San Diego County-Wide Fire and Arson Task Force and is a past Secretary-Treasurer.

Since becoming a member of the Metro Arson Strike Team, a multi agency unit staffed with fire, police, ATF and FBI personnel, Investigator Herrera has conducted hundreds of origin and cause investigations and testified as an expert in Municipal and Superior court