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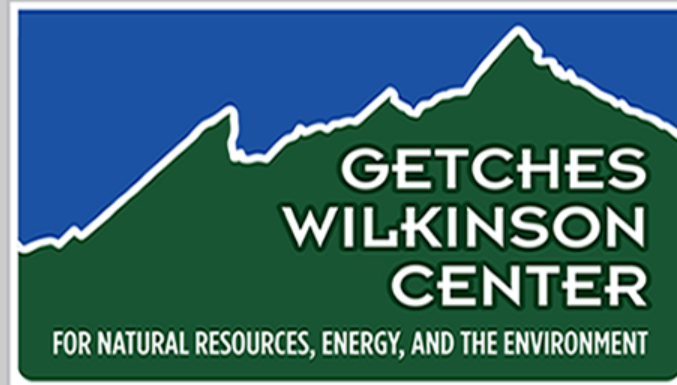
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**DATA, CORRESPONDENCE, REPORTS AND EXHIBITS
FOR GROUNDWATER QUALITY/HAZARDOUS WASTE CASES
- FILE PREPARATION AND MAINTENANCE -**

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**UNCOVERING THE HIDDEN RESOURCE:
GROUNDWATER LAW, HYDROLOGY AND POLICY LAW
IN THE 1990s**

**Rocky Mountain Ground-Water Conference
Colorado Ground-Water Association
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Boulder, Colorado**

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OUTLINE

DATA, CORRESPONDENCE, REPORTS AND EXHIBITS FOR GROUNDWATER QUALITY/HAZARDOUS WASTE CASES.

- FILE PREPARATION AND MAINTENANCE -

I. Introduction

II. File Organization

- A. Ease of Access
- B. Standard Format
- C. Making it Work

III. File Documentation

- A. Amount of Documentation
- B. Degree of Documentation

IV. Retention of Documents

- A. Legal and Ethical Issues
- B. Raw Data, Third Party Documents and Final Reports
- C. Draft Reports, Rough Notes, etc.

V. Conclusions

I. INTRODUCTION

A poor technical job will almost certainly lose the case for your client. But, if your science is sound, good file preparation and maintenance is key to interpreting your data and preparing correspondence, reports and exhibits which will put you on the winning side of the courts decision. There are three main areas that must be considered when preparing a technical file to provide litigation support. These are: 1) Organization, 2) Documentation, and 3) Retention of Documents in your files. Standardizing these procedures will not only increase your client's chances of prevailing in court, but will also improve management on your non-litigation cases.

II. FILE ORGANIZATION

A. Ease of Access

Files should be well organized such that anyone can find a document in your files in less than two minutes once they open the drawer. This will improve efficiency, reduce managerial and clerical costs, and allow more time for data interpretation and report preparation.

B. Standard Format

In order to obtain this ease of access you should start by picking a standard file format which is applicable to the majority of your projects. Use the minimum number of major headings required and add additional subheadings based on the particular job. Figure I is an example of major headings and subheadings used for file organization on a recent litigation case. Additional subheadings may be added, if needed during the project, but once the basic format is established it should be posted for use by others.

C. Making It Work

This system will not work unless you perform the following; 1) Keep all originals in the file, 2) Return all materials to the file immediately after their use, 3) Make sure that anyone using the file always places documents in the appropriate section.

III. FILE DOCUMENTATION

A. Amount of Documentation

Documentation is important for any technical project, but it is especially so with litigation support. The amount of documentation required is based on proving your case to a reasonable degree of **scientific probability**, using at least one complete hydrologic cycle, a minimum of three monitoring wells, etc. It is important to remember that you are trying to prove probability and not certainty, since no client has limitless time or resources and has not hired you to turn his case into a research project.

B. Degree of Documentation

The degree (or manner) of documentation is just as important as the amount of documentation, especially since opposing counsel will have access to all of your files prior to your deposition and trial. Consequently, it is best to follow the words of Dragnet's Joe Friday who always wanted, "The facts and nothing but the facts, Ma'am". First be concise and do not write down anything which can be misconstrued or anything that you wouldn't be perfectly comfortable answering questions about a year or more in the future. Second, don't give away your strategy by detailing it in your phone records like a road map. For example, you should write "Discussed remediation and picked bioremediation", not "picked bioremediation because pump and treat was expensive to install, hard to permit and only partially effective". Let opposing counsel *get* these particulars out of you in a situation you control. When preparing your files or giving testimony, "You should think of yourself as a reservoir of knowledge which you only provide to opposing counsel one drop at a time when he or she asks the proper questions."

IV. RETENTION OF DOCUMENTS

A. Legal and Ethical Issues

Retention of documents in your file entails both legal and ethical issues. You should discuss the legal implications with your own attorney and decide the ethical issues by yourself. But, remember you have been hired as an expert for your opinion and opinions change over time with new data.

B. Raw Data, Third Party Documents and Final Reports

A good policy is the retention of all raw data, third party documents and final reports. Raw data and third party documents are the basis from which most of your conclusions are reached. If these two sources of information are in the file, the opposing expert should have all the information he or she needs to draw their own conclusions. They can then refer to the final report(s) in the file and compare your conclusions against their conclusions.

C. Draft Reports, Rough Notes, etc.

Draft reports usually contain incomplete thoughts or data and should be removed from the file and destroyed once the final report is issued. The same pertains to rough notes, initial field observations, etc. If they are important enough to keep, then take the time to write out the notes, observations, etc. in a complete, clear and concise form so that the information can't be misconstrued. It is always best to let the data, documents and final reports speak for themselves, rather than trying to explain the differences between the draft and final reports.

V. CONCLUSIONS

Expert Witness work is a burgeoning part of the ground water quality and hazardous waste fields, which can provide new challenges for those who want to try it. A key aspect to being a good expert witness is the proper preparation and maintenance of your project files which include: 1) file organization, 2) file documentation, and 3) a document retention policy. Having these details worked out up front, prior to starting a project, will result in a better product for your litigation and non-litigation clients.

FIGURE I
FILE ORGANIZATION CHART

I. Project Data Sheets, Etc.

- Project data sheets
- Contact list
- Site photos
- Health and Safety plans
- Project summary

II. Correspondence

- Client
- Delta
- Regulators
- Third parties
- Attorneys

III. Phone Memos, Etc.

- Phone memos
- Faxes
- Email
- Meeting memos

IV. Financial Management

- Cost estimates/proposals
- Delta invoices
- Subcontractor invoices
- Invoice corrections

V. Contracts

- Client contracts
- Subcontractor contracts

VI. Field Data, Boring & Wells

- Permits
- Boring logs & notes
- Well installation forms & notes
- Tests (grain size, slug test, etc.)
- Survey data

VII. Field Data, Water Level/Sampling

- Groundwater level data
- Sampling information & Chain of Custody

VIII. Analytical Reports

- Laboratory data
- Soil vapor data
- NPDES forms

IX. Remedial System

- Design
- Installation
- Monitoring reports

X. Miscellaneous

- Field notes
- Inventory records/tank tests
- LEL surveys
- Area well data
- Site history
- Etc.

XI. Maps, Etc.

- Maps
- Air photos
- Figures

XII. Reports, Etc.

- Quarterly/status reports
- Reports
- Sensitive receptors survey
- Reimbursement package

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