Summary of Guidelines

These guidelines are intended to assist Ohio EPA employees in complying with Ohio public records law for the e-mail records and attachments they manage. The guidelines facilitate the effective capture, management and retention of electronic messages as public records. In this document, any reference to an e-mail record or message includes any attachments to that e-mail.

Generally, an e-mail message is a public record unless it falls under one of the exceptions listed in Section 149.43 of the Ohio Revised Code (ORC). Employees must maintain e-mail public records for the duration of the appropriate record retention period and provide them to the public upon request. The key guidelines include the following:

- For e-mails created by Ohio EPA employees, the individual who sends the e-mail message is the person responsible to maintain the record copy of the message.
- For e-mails received from outside the Agency, the Ohio EPA employee who is the primary recipient of the e-mail is to maintain the record copy of the message. If more than one employee is the main recipient, then all of the main recipients should maintain a record copy.
- All employees should set their GroupWise rule to include the original e-mail text in the reply. This will ensure that all of the information needed to create the complete record will be present as the e-mail discussion progresses.
- Employees can utilize the GroupWise Archives system to maintain e-mails for the appropriate length of time as required by various record retention schedules. The automatic deletion of e-mails by the e-mail system is NOT the appropriate retention schedule for e-mails.

Legal Requirements for Retention of E-mails as Public Records

Unless otherwise exempt, a public record is a “record” kept by a public office. ORC Section 149.011(G) provides the following definition for “records”:

> *Record "includes any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.”*

Clearly, an e-mail message is a document or item created or received by a public office. Whether the e-mail serves to document the organization, functions, policies, decisions, procedures, operations or other activities is the deciding factor as to its status as a record. This is true of any communication, whether electronic or paper.

E-mail messages are electronic documents and are similar to other forms of communicated messages, such as correspondence, memoranda, faxes, and letters, and should be retained under the same principles and guidelines as such records. Thus, if a written memorandum has a retention schedule of a certain time, an e-mail version of the same record should have the same retention period.

The following is from the Ohio Electronic Records Committee Guidelines for Managing Electronic Mail:

> *"E-mail itself is not considered a record series or category. It is a means of transmission of messages or information. Like paper or microfilm, e-mail is the medium by which this type of record is transmitted. Just as an Agency cannot schedule all paper or microfilm records together under a single retention period, an Agency cannot simply schedule e-mail as a record series. Rather, retention or disposition of e-mail messages must be related to the information they contain or the purpose they serve. The content, transactional information, and any attachments associated with the message are considered a record (if they meet the ORC criteria). The content of e-mail messages may vary considerably, and therefore, this content must be evaluated to determine the length of time the message must be retained."*

An e-mail message is considered a public record unless it falls under one of the exceptions listed in Section 149.43 of the Revised Code. These records must be maintained for the duration of the appropriate retention period and provided to the public upon request. Retention periods are listed in Ohio EPA's record retention schedules. These schedules can be found on the State of Ohio's Record Information Management System (RIMS) at http://www.gsd.das.state.oh.us/rims/default/default.asp.

Each Ohio EPA employee is to treat every e-mail message as a public record until the employee determines through the application of public records and retention policies that the e-mail message is not a public record or that it may be destroyed.

Non-Record Materials

Any e-mail received or created that does not document the organization, functions, policies, decisions, procedures, operations or other activities of the Agency is not legally defined as a "record" and may be deleted immediately, since it is not an official record. Examples of these types of e-mail messages may include:

- Personal Correspondence: These are typically the "Let's do lunch" (not a State-business lunch) or "Can I catch a ride home?" type of note.
- Miscellaneous non-Agency authored documents received from external sources: These are typically non-state publications such as e-zines, spam, newsletters sent by professional groups and other informational items that are not used by Agency employees to make decisions.

Retention and Scheduling Requirements for Public Records

E-mail messages that meet the definition of a "record" in the ORC must be scheduled, retained and disposed of properly. These official records fall into the following categories:

Transient Retention

Much of the communication via e-mail has a very limited administrative value. For instance, an e-mail message notifying employees of an upcoming meeting would only have value until the meeting has been attended or the employee receiving the message has marked the date and time in his/her calendar.

The informal tone of transitory messages might be compared to a communication that might take place during a telephone conversation or conversation in an office hallway. These types of records are transient documents and can be deleted when they are no longer of administrative value. Ohio EPA's General Schedule for Transient Documents (715-0829) usually governs these types of e-mails:

- Transient Documents: Includes telephone messages, post-it-notes, drafts and other limited documents which serve to convey information of temporary importance in lieu of oral communication.
  Retention: Until no longer of administrative value and then destroy.

Intermediate Retention

E-mail messages that have more significant administrative, legal and/or fiscal value but are not scheduled as transient or permanent should be categorized under other appropriate record series. The majority of the Agency's record retention schedules have some type of intermediate retention period.

Many e-mails can be covered under Ohio EPA's retention schedule for General Correspondence (715-0830):

- General Correspondence: Includes internal correspondence (letters, memos); also, correspondence from various individuals, companies, and organizations requesting information pertaining to Agency and legal interpretations and other miscellaneous inquiries. This correspondence is informative (it does not attempt to influence Agency policy).
  Retention: Retain 6 months and then destroy.

However, other e-mails may be governed by a more specific record retention schedule particular to your office or division: For example:

- Closed Scrap Tire Collection, Recovery, Storage and Transporter Facilities: Withdrawn applications, correspondence, and final actions related to the facility.
  Retention: Retain onsite for 1 year after closing the facility. Then retain offsite 7 years and then destroy.

Permanent Retention

E-mail messages that have significant administrative, legal and/or fiscal value and are scheduled as permanent also should be categorized under the appropriate record series. Ohio EPA has relatively few record retention schedules that call for permanent retention. Consult your division's or office's record retention schedules on the RIMS system to determine if any e-mails would be considered for permanent retention. Any record retention schedule calling for permanent retention will list this requirement. For example, the Division of Hazardous Waste Management's schedule for records related to U.S. EPA identification numbers reads as follows:

- Records related to U.S. EPA identification numbers: All documents and correspondence related to the issuance of U.S. EPA identification numbers to persons regulated by hazardous waste, used oil and universal waste laws.
  Retention: Retain permanently

For a complete list of Ohio EPA's record retention schedules, consult the particular record retention schedules for your division on RIMS, found at http://www.gsd.das.state.oh.us/rims/default/default.asp.

Guidelines for Managing E-mail

Responsibility for Retaining the Record Copy
For e-mails created by Ohio EPA employees, the individual who sends the e-mail message is the person responsible for maintaining the record copy of the message and producing it in response to a public records request in accordance with this guideline.

For e-mails received from outside the Agency, the Ohio EPA employee who is the primary recipient of the e-mail is to maintain the record copy of the message. If more than one employee is the main recipient, they should all maintain a record copy. If an Ohio EPA employee is cc'd or bc'd on an e-mail from an external party, and no other Agency employees received a direct copy, the cc'd employee is to retain the record copy.

All employees must understand and carry out their role in records management and Ohio EPA must ensure compliance with Agency procedures and Ohio law.

Managers and supervisors are responsible for ensuring that their employees comply with this policy and the Agency records retention and public records disclosure policies.

Storage of E-mail and Filing

Short-term solution to e-mail storage and retrieval
Employees should file non-transitory e-mail messages in a way that enhances their accessibility and facilitates records management tasks. In the short term, each division and office shall ensure that a system and procedures are in place for the proper retention of e-mail messages. The system and procedures shall meet the following performance criteria:

- Ensure that employees retain all e-mail messages in accordance with Agency retention schedules.
    - Ensure that employees can quickly and easily produce e-mail messages in response to public records requests.
    - Ensure that confidential documents and other records excluded from disclosure are identified and segregated.
- Ensure that when an employee is absent or separated from a unit, division, or office that his or her e-mail messages are properly retained and can be quickly and easily produced.
- Ensure that e-mail messages are properly secured and if stored electronically are backed up regularly to prevent loss.
- Ensure that unauthorized users are not able to access, modify, destroy or distribute records.
- Facilitate destruction of records on schedule.
- Enable transfer of records that will not be destroyed to the State Archives.
- Ensure that the auto-delete function of GroupWise is disabled.
- Ensure the system logically relates or groups records.

A simple way to make it easy to retrieve requested e-mail records is to write clear and descriptive subject lines. The following are some examples of poor and good subject lines for the same message:

Poor or confusing subject lines	***Better, descriptive subject lines***
helpful info	HB 397 contact info
report	DERR FY06 Q1 financial report
minutes	Jan 99 SCCGW minutes
important	Revised DSW admin. procedures
Today?	Comments Needed on HB 100 Today
news	new Agency head appointed
Advice needed	Confidential Attorney Client Privileged Document. ERAC Case No. 0369145887