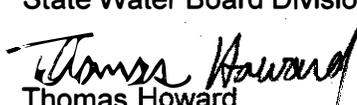

State Water Resources Control Board

TO: Regional Water Board Executive Officers
State Water Board Division Chiefs

FROM: 
Thomas Howard
Executive Director

DATE: February 17, 2012

SUBJECT: MANAGEMENT AND RETENTION OF E-MAILS

PURPOSE

The purpose of this memorandum is to set forth the State Water Resources Control Board and Regional Water Quality Control Boards (Collectively Water Boards or Board) policy for handling and retention of e-mails and similar electronic communications.

SCOPE

This policy governs the retention and disposition of all e-mails that are created, received, stored or otherwise managed by all users¹ of the Water Boards' e-mail system. This policy supersedes all other policies and guidance documents related to e-mail retention. For purposes of this policy, e-mails are electronic communications, including associated metadata,² that are authored, transmitted, received, held or archived in the Water Board's computer system. E-mails also include electronic calendar appointments, electronic tasks and reminder notes, and all other forms of electronic communications sent through the Water Board's e-mail system. The term e-mail, as used here, also includes any attachments to an e-mail. Other forms of communication included within the scope of this policy are:

- Communications generated or received by the e-mail system through online texting or chat facilities or applications;
- Communications generated or received by the e-mail system through a web portal; and,
- Any other electronic message files or e-mail compilation files (such as PST files) generated or received by the e-mail system, but stored by the user apart from the official

¹ The term "Users" includes all employees, officers, board members and other persons having access or authorized to use the e-mail system.

² The term "metadata" refers to information about the e-mail's origin, formatting, addressing and routing that is stored by the e-mail system, but not ordinarily visible with the text of the message.

program or administrative files of the Water Boards, including those stored on removable media or personal electronic devices.

The e-mail system and the computer system are the property of the State of California. Users of the Water Boards' e-mail system or other electronic communication infrastructures of the Water Boards are required to adhere to the following policy and procedures. Violation of the Water Board's e-mail policy may result in disciplinary action, up to and including termination.

This policy complements other policies governing records management and access to and appropriate use of the Water Boards' computer data and electronic communications systems. These policies are to be read together as a whole.

CLASSIFICATION OF E-MAIL

E-mails, including their attachments, are classified for purposes of record retention in the same manner as other information and records sent, received, and maintained by the Water Boards. An e-mail's classification as a particular type of record is determined by the e-mail's content and purpose, not by its medium. Classification of all e-mails as records and disposition in accordance with records retention schedules (STD Form 73), shall be based on an assessment of the content rather than the form or origin as an e-mail. As used here, the term "record" does not include that term as it is used in the Information Technology (IT) context to mean a discrete segment of data written to a disk, or a group of fields of information stored in a database.

Under State law, most e-mails are State records subject to classification and disposition in accordance with State requirements. These requirements are administered by California Records and Information Management Program (CalRIM) within the Department of General Services. CalRIM has promulgated a number of guidance documents and administers Chapter 1600 of the State Administrative Manual governing records management. Each board, department or other subdivision of State government establishes retention schedules for its own records on a record retention schedule (STD Form 73), subject to approval by CalRIM. It is unlawful for any person to destroy or discard state records, except in compliance with a record retention schedule approved by the Department of General Services (see Gov. Code, §14755).

It is the responsibility of the users of the Water Boards' e-mail system to be familiar with the applicable record retention schedule (STD Form 73) as well as the existence of any other external duty(s) to preserve the e-mails and attachments. In addition to the duty to preserve records in accordance with the Water Boards' record retention schedules, a duty to preserve records may also arise as the result of a litigation hold, a pending request under the Public Records Act, an audit requirement, or a court order. Some of these duties to preserve may apply to all e-mails whether or not they have been determined to be records.

Long-Term E-mails

For the purposes of this policy, an e-mail is classified as a "long-term e-mail" if it is created or received by any of the Water Boards in connection with the transaction of public business and preserved or appropriate for preservation by the Water Board or its successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Board or because of the informational value of data in them.

Long-term e-mails are distinguished from transitory e-mails (see below) by having value as evidence, and for the preservation of analyses, assessments, investigations, decisions, agreements, descriptions, actions taken, governmental or financial transactions, personal information, creative work and intellectual property. This includes both incoming and outgoing e-mail. Information about the recipient and the date sent may be a basis making this determination. For example, this information may have long-term evidentiary value when providing legally required notices when e-mail service has been agreed to. Appropriate steps must be taken to preserve information about the addressee and date sent along with the body of the message whenever it is exported or transferred.

The appropriate location for maintaining long-term e-mails is in the regular program or administrative files of the Water Boards, not in the e-mail system. E-mail systems are not accepted as records management systems by CalRIM. It is the responsibility of users to move or export all long-term e-mails into appropriate organizational files as promptly as possible, but no later than 90 days after receipt or origination.

Transitory E-mails

The term "transitory e-mails" is used in this policy to refer to e-mails that do not meet the definition of long term e-mails as defined above, but are instead created primarily for the communication of informal information as opposed to the perpetuation or formalization of knowledge. Transitory e-mails are to be managed more rapidly pursuant to the transitory e-mails disposition in the applicable record retention schedules (STD Form 73).

Examples of transitory e-mails include the following:

- Informal notes, correspondence, worksheets, drafts or other work-product that does not represent a final communication, agreement, action or determination, and has not been circulated outside of the water boards;
- Appointment calendars, including attachments to calendar entries, that have no long-term institutional value;
- Miscellaneous notices of community affairs, employee meetings or holidays;
- Exact duplicates of existing e-mails, calendaring items, notices or other documents, including carbon copy (cc) or blind carbon copy (bcc) communications;
- Transmittals and acknowledgments that do not add any substantive information to the material transmitted or do not have other evidentiary value such as recording time and manner of delivery;
- Requests for printed (or electronic) material after the requests have been filled; or,
- Tickler, follow-up or suspense copies of correspondence that no longer serve any purpose.

MANAGEMENT OF E-MAIL

Long-term e-mails are to be moved from the e-mail system to the appropriate program or administrative files of the organization as promptly as possible, but in any event, no longer than 90 days after receipt or origination. Final disposition must be consistent with the applicable record retention schedule (STD Form 73), or as otherwise is necessary to comply with any applicable litigation hold or duty to preserve.

Transitory e-mails must be deleted immediately after they are no longer needed and, in any event, are to be retained in the e-mail system no longer than 90 days. If a transitory e-mail must be retained longer than 90 days, it must be moved out of the e-mail system into appropriate organizational files.

No e-mail is to be deleted without first making an affirmative determination that:

- Further retention is not required by the applicable Form 73;
- It is no longer needed, and
- It is not potentially subject to litigation or a public records act request (see litigation holds, below).

If a portion of an e-mail, such as an attachment, is appropriate for retention, that portion of the e-mail should be managed as a long-term e-mail, even if other portions do not need to be retained.

All duplicates and copies of e-mails deleted in accordance with the above requirements must also be deleted, including those that are stored in any location on Water Board servers, computers, or on any storage medium such as offsite storage, removable media, and personal electronic devices. Long term retention or storage of e-mails and attachments by users on any media or in any location other than approved e-mail mailboxes, e-mail archives, litigation document management systems, electronic content management (ECM) systems or organizational paper-based files is prohibited.

E-mails in the Water Boards' e-mail system will be automatically deleted after ninety (90) days. As an exception, managerial users, legislative office staff, and attorneys (Office of Chief Counsel and Office of Enforcement) may archive e-mails in the e-mail system's electronic archive tool for up to five years.³ This 90-day deletion rule refers only to deletion of records from the e-mail system, because the e-mail system is not an acceptable record management system. The 90-day deletion rule is not an authorization to destroy a long-term e-mail. All long-term e-mails shall be properly preserved outside of the e-mail system, in the regular program or administrative files of the Water Boards in accordance with the applicable record retention schedule.

³ Although the archive has the ability to store e-mails up to five years, they must nonetheless be kept for the time periods by applicable records retention schedules. E-mails that are to be kept longer than the five years allowed by the archive will need to be moved to some other form of appropriate storage or records management system.

Employees must take appropriate and timely steps to export or transfer to appropriate program or administrative files all long-term e-mails stored in the e-mail system that are to be preserved beyond the applicable 90-day automatic deletion rule. Users are expected use appropriate computer application settings to preserve routing and addressing information with the body of the message. Managerial users and attorneys who have archived e-mails must transfer them to an ECM system when it becomes available, or to paper files no later than the end of five years if no approved ECM system is yet available.

Litigation Holds

A litigation hold is an administrative determination made by the Office of Chief Counsel (OCC) that there is a legal duty to preserve evidence related to existing or potential litigation. The litigation hold determination implements a mandatory suspension of the destruction, deletion or disposal of all information related to a pending or potential lawsuit or similar legal action. Litigation holds can apply to all forms of information, including electronically stored information such as e-mails. It is possible that OCC will implement a litigation hold before litigation is actually filed, such as where statements or circumstances indicate that litigation is substantially likely. Deletion of e-mails that are subject to a duty to preserve may result in sanctions against the organization and individual employees, including substantial monetary penalties, for destruction of evidence. Any questions about initiation of a litigation hold should be directed to OCC.

Copies of all e-mails, including metadata and attachments subject to a litigation hold must be retained by the Water Boards, including those that would be otherwise deleted from a user's regular mailbox under the 90-day deletion rule. OCC and Department of Information Technology will use a specialized litigation e-mail archive or other litigation record management system for this purpose. Users will receive instructions about what actions they will be required to take in coordination with OCC in order to manage the litigation hold(s) within their own e-mail and/or information management systems.

Ordinarily, management of e-mail will be routine in the absence of a litigation hold. However, if a user is aware of any facts that cause him or her to believe the Water Board is likely to be involved in litigation on a matter to which an e-mail pertains, and there is no litigation hold in place, he or she must promptly bring this to the attention of OCC and take all effective steps that will prevent deletion of the e-mail until proper clearance is obtained.

E-mails subject to a litigation hold -- or where litigation is likely -- must retain embedded metadata. If a litigation e-mail archive has not yet been set up to accomplish this, then users intending to export or transfer e-mails to program or administrative files for long term storage are expected use appropriate computer application settings to the extent reasonably possible to preserve metadata with the body of the message.

Records or substantive portions of records, including metadata, deleted in violation of applicable record retention requirements or duties to preserve as the result of a user's inaction may be grounds for appropriate disciplinary action. Managers and supervisors are accountable for effective implementation of this rule by all users of the e-mail system under their supervision.

Public Records Act Requests

Requests for records under the Public Records Act (Gov. Code, §§ 6250 et seq.) can trigger a duty to preserve when received by a Water Board. Transitory and long-term e-mails, including metadata and attachments, that are the subject of a pending Public Records Act request cannot be deleted until the response to the Public Records Act request has become final. E-mails can still be exported from the e-mail system to organizational files for long-term storage to comply with the 90-day rule, but metadata and attachments must remain associated with the e-mail body after the transfer. Transitory e-mails kept solely because of the Public Records Act request should be deleted once the Board's response to the request has become final.

MANAGEMENT PRACTICES

It is the responsibility of program managers to ensure that users receive adequate training to carry out the responsibilities for proper e-mail management, have the resources available to take the required actions and conduct periodic audits of employee practices and conditions of e-mail to ensure that proper e-mail management is occurring. Program managers are also responsible for ensuring that these results are properly documented. Appropriate actions to ensure results include the following management practices:

1. Communicate to supervisors and line staff expectations for proper e-mail management;
2. Ensure that supervisory position or duty statements contain express e-mail management responsibilities;
3. Create a management structure to keep program managers informed and to ensure that supervisors are aware of staff e-mail management practices and are achieving specific outcomes on a consistent basis;
4. Implement a training program for e-mail management;
5. Record completion of required training, employee audit results and corrective measures;
6. Ensure that adequate resources and assistance are available that will enable staff to effectively manage e-mail;
7. Create an audit structure that will provide useful feedback about the effectiveness of e-mail management practices in the office; and
8. Include the above management practices when projecting staffing needs for budgetary purposes.

This policy supersedes any prior inconsistent policies and will be in effect until superseded or withdrawn. Any questions about this policy should be directed to Peter Peterson at (916) 341-5175 or PPeterson@waterboards.ca.gov.