

Agency Records Management

This directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to Ohio EPA personnel to achieve consistency in the management of Agency records. This directive does not have general application or the force of law.

Purpose

The purpose of this policy is to establish an effective records management program that complies with Ohio Revised Code sections 149.333 – 149.341, 149.44, and DAS Directive GS-D-04 for all records of the Ohio Environmental Protection Agency (Ohio EPA).

Applicability

This policy applies to all divisions, districts and offices within Ohio EPA. This policy applies to paper and electronic records.

[Note: Paper records that are converted to electronic records (ingested into the eDocument System) can be destroyed once they have been scanned, ingested, and verified through quality control procedures. This policy would then cover the final destruction of the electronic record.]

Definitions

DAS General Schedules - A document listing record series and retention periods for records that are common to all state agencies, which have been established by the State Records Administrator, State Archivist, and State Auditor. Any agency may adopt these schedules which become effective immediately for that agency.

Ohio EPA Record Retention Schedules - A document listing all records series for Ohio EPA and indicating for that series the length of time the records are to be retained. This schedule covers documents that are specific to Ohio EPA and are either not covered by the DAS General Schedules or due to operational needs Ohio EPA has a longer minimum retention period than what is required by the DAS General Schedule. This schedule becomes effective when approved by the State Records Administrator, State Archivist, and State Auditor.

Record - Includes any document, device, or item, regardless of physical form or characteristic, including an electronic record, 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.

Record Series – A group of like records that are treated as a unit for records management purposes. A records series may contain many separate files, but is treated as a single unit for all purposes relating to records retention. Each Records Series is assigned a Series Authorization Number.

Records Management Coordinator – An individual who is responsible for implementing and maintaining the Agency's records management program. It is the responsibility of the Records Management Coordinator to ensure that the agency retention schedules are appropriate and current for the purpose of establishing and retaining agency records.

Records Retention Coordinator - An individual so designated within a district, division, or office that is responsible for maintaining the records retention program for their district, division, or office.

State Records Administration - An administrator appointed by the Director of the Department of Administrative Services (DAS) whose function is to assist in the establishment and the administration of a state records program for all state agencies.

Policy Statement

It is the policy of Ohio EPA to ensure that all Agency records created and maintained are scheduled for retention and disposal in the manner prescribed by applicable law and procedure.

Agency Records Management

Procedures

A. Record Retention Schedules

1. A copy of the Agency's current records retention schedules will be made available for review by the public at each District Office and with the Records Management Coordinator in Central Office. These schedules can be accessed by staff through the Agency's intranet site.
2. All records created, received, and/or maintained by Ohio EPA must be maintained in accordance with Ohio EPA Record Retention Schedules or the DAS General Schedules adopted by Ohio EPA. All records must be included in a record series and must be assigned a document type. The document type is important for determining the Record Series and assigning a Series Authorization Number.

B. Storage of Records

1. Electronic records shall be stored on Agency servers or in the eDocument System.
2. Paper records shall be stored in an authorized area of the district, division, or office. A district, division, or office may choose to use an offsite storage facility. If documents are to be stored offsite, proper documentation of the transfer of records shall be coordinated through the Records Management Coordinator.

C. Record Retention and Disposal

1. All records are to be disposed of in accordance with Ohio EPA's Record Retention Schedules or the DAS General Schedules adopted by Ohio EPA, unless a record scheduled for destruction is involved in an audit, litigation hold, or has otherwise been exempted from destruction by the eDocument Governance Board. See the attachment to this policy regarding the protocol for litigation holds.
2. Any Records Retention Coordinator requesting destruction of records maintained within their district, division, or office must complete a Certificate of Records Disposal and forward it to the Records Management Coordinator. Once the Records Management Coordinator has confirmed the records retention schedule for that record series allows for destruction of the records, destruction of the records can occur. No records may be disposed of without an approved Certificate of Records Disposal. The Records Management Coordinator shall maintain all approved certificates.

3. The Records Management Coordinator shall request approval in writing and document the granting of such approval by the State Archivist on the Certificate of Records Disposal before approving a Certificate of Records Disposal for records whose destruction must be approved by the State Archivist (as may be required by certain records retention schedules).

D. Staff Responsibility for Record Retention

1. Each district, division, or office will designate a Records Retention Coordinator to coordinate the inventorying, scheduling, and disposal of all records. This individual will also serve as a liaison to the Records Management Coordinator.
2. The Records Management Coordinator may audit any district, division, or office to ensure all records are scheduled for retention and destruction according to Agency policy and procedures.
3. The Records Management Coordinator will submit an annual Certificate of Compliance to the State Records Administration by December 31 of each year in accordance with DAS Directive GS-D-04.

Attachment – Litigation Protocol

Purpose of this Protocol

In order to comply with state or federal rules of procedure, it may be necessary to preserve information related to pending or reasonably anticipated court actions. The failure to preserve such information could lead to the imposition of severe sanctions. Therefore, all Agency personnel are required to follow the “litigation hold” procedures described below to preserve documentation that may be relevant to pending or reasonably anticipated court actions.

Effect of a Litigation Hold

Documentation that is subject to a litigation hold shall not be destroyed until the litigation hold is removed. This protocol applies to all documentation that is subject to a litigation hold regardless of whether the documentation is in paper or electronic format. This protocol also applies regardless of whether the documentation could be destroyed under an applicable records retention schedule.¹ Documentation already destroyed pursuant to a valid record retention schedule prior to notification of the hold is not affected.

Initiation of a Litigation Hold

A litigation hold will be initiated when Ohio EPA receives a written request from the Attorney General's Office (AGO) to place a litigation hold on certain information. In addition, a litigation hold will be initiated when the Agency's Chief Legal Counsel, or his designee, requests that the Agency's Records Management Coordinator place a litigation hold on certain documentation.

A litigation hold should be initiated when any of the following things occur:

1. Ohio EPA receives a preservation letter in the context of pending or reasonably anticipated court proceedings;
2. Ohio EPA is sued;
3. Ohio EPA receives a written notice of intent by a third party to initiate a citizen suit;
4. Ohio EPA staff recommend to the Director that enforcement action be pursued against a party;
5. Ohio EPA receives a Notice of Appeal of an Agency authorizing action (e.g. a permit, license or plan approval);

6. Ohio EPA receives a Notice of Appeal of the adoption of rules.

Notification of Litigation Hold

Agency staff will be notified of a litigation hold through the following procedures: The AGO or Chief Legal Counsel will notify the Records Management Coordinator of the initiation of a litigation hold by sending the Records Management Coordinator a written notice of a litigation hold, which shall include instructions for how to comply with the litigation hold. The Records Management Coordinator will then place an announcement on the Agency's intranet page and forward the written litigation hold notice to the following staff:

1. The individuals on the Agency's public records contacts list (e.g. district and central office records custodians);
2. The Supervising Attorneys in the Legal Office;
3. A designated ITS contact;
4. A designated PIC contact;
5. Agency Chiefs, who will then forward it to their affected staff.

Monitoring Compliance with the Litigation Hold

The Records Management Coordinator and Agency Chiefs will be responsible for monitoring compliance with this protocol. ITS and the Legal Office will assist with monitoring compliance.

The procedures that will be used to monitor compliance include the following:

1. The Records Management Coordinator will regularly update the master list of litigation hold notices posted on the Agency's Intranet site.
2. The Records Management Coordinator will work with the Agency's Office of Information Technology Services (ITS) to put in place reasonable and feasible measures to preserve electronic information that is subject a litigation hold.
3. When the Chiefs provide notice to affected staff of the existence of a litigation hold for facilities or projects within their areas of responsibility, the communication should require that affected staff respond with a written acknowledgement of receipt of the litigation hold notice, which should be filed by the Chiefs. The communication from the Chiefs to their affected staff should also state that if staff has any questions regarding the scope of a litigation hold or how to comply with a litigation

¹ This protocol further applies to physical evidence, such as sample results, that are in the Agency's custody or control.

Attachment – Litigation Protocol

hold, that they should contact the Legal Office for more information. The Legal Office will assist in answering questions regarding litigation hold procedures.

Duration of a Litigation Hold

A litigation hold shall remain in effect until the Records Management Coordinator receives written notification from either the Chief Legal Counsel or the AGO that the hold for a given facility or project should be removed. Upon receipt of such notice, the Records Management Coordinator will post a notice on the Agency's Intranet site indicating that the hold for the given facility or project has been removed. The Records Management Coordinator may also send a written notice of removal of the litigation hold to the following individuals:

1. The individuals on the Agency's public records contacts list (e.g. district and central office records custodians);
2. The Supervising Attorneys in the Legal Office;
3. A designated ITS contact;
4. A designated PIC contact;
5. Agency Chiefs who will then forward it to their affected staff.