

# Authority View

A Publication of The Association of Environmental Authorities

## Decisions, Decisions, Decisions

**AEA Commissioners Conference  
Deerwood Country Club  
June 30, 2008**

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This conference is about decision making and is for decision makers. Are you aware that there are Decision Support Systems which can progress a board through a public process to make a complex decision in spite of contentious issues and competing community forces? What decisions can an authority board expect to be making over the next ten years? Come and find out at the AEA Commissioners' Conference on June 30, 2008.

An engineering consultant from O'Brien and Gere will introduce members to a Decision Support System which is one of several now being used in the market place with some real world examples. Then several other consultants will present an overview of the types of decisions that authority boards will be making in the next ten years. With difficult economic times facing the public we serve, the balancing act of providing improved water quality and holding user fees down becomes even more

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## E-mail May be Public Records



*by John Napolitano Esq., Johnson & Conway LLP*



Authorities have an obligation to make their employees aware that e-mail messages, like paper records, may be public records and must be maintained and destroyed according to established record management procedures. Therefore, it is incumbent on the Authority to develop an e-mail policy that both identifies and retains e-mail messages that are public records and allows them to be retrieved as necessary.

To determine if an e-mail is required to be kept, it must be a public record, as defined by the Destruction of Public Records Act ("DPRA"), N.J.S. 47:3-16 as amended, which states in part:

**"public records mean any paper, written or printed book, document or drawing, map or plan, photography, microfilm, data processed or image processed document, sound recording or in a similar device, or any copy thereof, that has been made or required by law to be received for filing, indexing, or reproducing by any officer, commission, agency, or authority of the State or any political subdivision thereof, including any subordinate boards thereof, or that has been received in the course of his or its official business by such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof, in connection with the transaction of public business and has been retained by such recipient or its successor as evidence of its activities or because of the information contained therein."**

A document that meets the definition of DPRA must be retained in accordance with the records retention and disposition schedules approved by the State Records Committee as established under

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## E-mail Maybe Public Records

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N.J.S. 47:3-20, whether or not it is subject to public disclosure.

Typically, Authority documents are required to be disclosed in accordance with the Open Public Records Act ("OPRA") or pursuant to discovery in a lawsuit, unless they are subject to a privilege or contain confidential information. E-mails are subject to the same disclosure rules. The improper deletion of these e-mails may subject the Authority or its personnel to fines or judicial sanctions or possible criminal penalties pursuant to DPRA, depending on the circumstances. E-mails destroyed in accordance with DPRA will protect the Authority from such penalties.

However, if an Authority is aware of a potential litigation, all e-mails relevant to that potential litigation cannot be destroyed according to the Court Rules, whether or not they could be destroyed pursuant to DPRA schedules.

### TYPICAL TYPES OF E-MAIL DOCUMENTS

(Summarized from Circular Letter 03-10-ST – Managing Electronic Mail)

#### 1. Non-Record E-Mail Messages

These messages do not meet the criteria for New Jersey for a record and may be deleted at any time, unless they become part of some official record as a result of some special circumstances. These include personal correspondence and non-governmental solicitations such as SPAM, publications, promotional materials from vendors and similar materials that are publicly available to anyone and are not part of official records specifically incorporated into the official records. These documents may be deleted immediately.

#### 2. Official Record E-Mail Messages

Transient e-mails are messages that are informal e-mails that do not set policies, establish guidelines or procedure, certify a transaction or become a receipt. These e-mails may be compared to a communication that may take place during a telephone conversation or a conversation in a hallway. Transient documents include telephone messages, scheduling of a meeting, drafts and other documents which would serve to convey information of temporary importance in lieu of oral communication. These documents must be retained until no longer of administrative value and then may be destroyed.

#### 3. Intermediate Documents

These include, but are not limited to:

##### a. General Correspondence

Correspondence that is informative and is not to influence Authority policy.

##### b. Internal Correspondence

Letters, memos, requests for routine information, monthly and weekly status reports, and documents advising super-

visors of various issues and status of on-going projects.

##### c. Minutes of Authority Staff Meetings

These documents must be retained in accordance with General Retention Schedules established by the State Records Committee and then may be destroyed. The schedule requires the document be maintained for one to four years.

#### 4. Permanent Records

These e-mail messages have significant administrative, legal or fiscal value and be scheduled as permanent and should be recognized under the appropriate record series. They include, but are not limited to:

##### a. Executive Correspondence

From the head of the agency dealing with significant aspects of the administration of their offices. These include correspondence regarding agency policies, programs, fiscal and personnel matters.

##### b. Departmental Policies and Procedures

Includes published reports and policy studies.

##### c. Minutes of Authority Meetings

All e-mail except for non-record and transient e-mail must be kept for some specific period of time whether or not these documents qualify as a public record pursuant to OPRA. Permanent or intermediate records may be archived either electronically or the Authority may make paper copies of these documents and file the documents in accordance with the normal Authority filing policy. These documents must be stored in a format which would allow a user to access them at a later date.

The Authority should discuss with its information technology personnel or consultant and its Authority Counsel what system would work best for the individual Authority needs.

*John Napolitano Esq. has served as Counsel to AEA and can be reached at [ajnapolitano@jnclaw.com](mailto:ajnapolitano@jnclaw.com) or 201-447-2080*

**The 10th anniversary  
NJEPA Emergency  
Preparedness Conferenc  
will be held at the  
Tropicana Resort on  
May 8 - 9, 2008.  
For complete information,  
visit the NJ Emergency Preparedness  
Association's website at  
[www.njepa.org](http://www.njepa.org).**