

Document Retention Guidelines

Prepared for:



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE DIVISION
Professional Liability Committee

Please Note: The material contained in this document is intended to constitute general observations and information about professional practice issues. Nothing contained in this document is intended to constitute legal advice or should be relied upon. For specific advice, consultation with a attorney is strongly recommended.

Introduction

As a service to its membership, the National Society of Professional Engineers regularly provides guidance to members on issues related to business practices, ethical situations, and other professional matters. One area in which NSPE is consistently solicited for guidance is in setting document retention policies. In response to these inquiries, the Professional Engineers in Private Practice's Professional Liability Committee (PLC) has investigated establishing some general guidelines for document retention that could be used by members to create their own company policies.

Establishing a set of guidelines for document retention is a somewhat complex task. There are differing and valid opinions on the issue, and laws and statutes vary from state to state making it difficult to develop standard policies. Additional complications result for a number of reasons, some of which are listed below:

- (1) Companies working in multiple states must consider laws existing in all states of practice.
- (2) Companies doing work for federal entities or in other countries may be subjected to various laws that do not exist at the state level.
- (3) The type of work in which a company engages can affect the necessity for document retention.
- (4) Clients' wishes may factor into a firm's document retention policies. Some clients may require consultants to adhere to more strict document retention policies than mandated by law.
- (5) The expense of maintaining storage facilities must sometimes be weighed against the likelihood that the stored information will be needed or beneficial in the future.
- (6) A firm's desire to retain certain documents may be completely unrelated to any legal or liability requirements.

Data Collection

Before developing any guidelines of its own, the PLC reviewed existing articles and studies related to document retention. The underlying principles and rationale behind the various opinions on document retention were also reviewed. In May 2003, a paper summarizing those data collection efforts was developed by the committee.

The results presented in the May 2003 paper underscored the fact that document retention policy guidelines were scarce and varied. Opinions concerning document retention were determined to be just as varied. For that reason, the committee desired further information before formulating any specific guidelines.

To continue the data collection effort, an electronic survey was distributed to NSPE members in June 2003. The survey asked a number of questions concerning document retention policies.

Almost 480 people responded to the survey. Survey participants were also requested to submit a copy of their company's formal document retention policy to the PLC for review. Almost 20 firms responded to this request, with a number of those submitting detailed plans.

Each of the submitted plans was reviewed in depth along with the data obtained from the electronic survey. The results of the survey and the conclusions derived from the evaluation were summarized in a paper by the PLC that was completed in February 2004.

After the February 2004 paper was finalized, the results of the PLC's effort to date were summarized in an article that appeared in *Engineering Times*. The article indicated that the PLC would use the results of the studies to develop document retention guidelines for NSPE members. Due to the number of limitations involved in creating specific guidelines that would be applicable to all NSPE members, it was also mentioned that the PLC guidelines would be somewhat general.

The following section of this paper serves as the recommended guidelines for document retention that developed as a result of the PLC initiative. They are in no way intended to serve as the sole foundation for development of a company's document retention policies. Rather, the guidelines cover key areas that document retention policies should address along with recommendations on the durations that certain documents should be retained.

Those using the guidelines should do so with caution to ensure that whatever formal policy they create takes into consideration their firm's legal and contractual obligations. These guidelines focus on the retention of documents related to engineering practice. Retention policies for other documents, such as human resource data or tax and corporate documents, although briefly mentioned in the guidelines, were not the focus of the study.

Document Retention Guidelines

The following guidelines are recommended for use in establishing document retention policies.

At a minimum, retention policies should be established in the following broad areas:

- (1) Human resource and administration *
- (2) Accounting and financial *
- (3) Legal (including contracts) *
- (4) Drawings and specifications
- (5) Studies and reports
- (6) Calculations and design
- (7) Construction
- (8) Approvals and reviews
- (9) Correspondence

The first three general areas in which it is suggested that retention policies be established (*) are not specific to the practice of engineering. Therefore, other than mentioning that policies should be established, no guidelines are offered. Each of the remaining six areas will be discussed.

Drawings and Specifications

Retention policies for drawings and specifications were mentioned in all of the materials that were reviewed during the study. In addition, both the results of the electronic survey and the review of submitted policies indicate that retaining these documents was of primary importance.

The PLC recommends that drawings and specifications be maintained in hard copy format, if possible, because electronic data can sometimes be difficult to access when the programs used to create the drawings or specifications become outdated or obsolete. Electronic copies can also be maintained at the discretion of the firm.

Due to their importance and the fact that they represent the final product on most jobs, construction drawings and specifications should be retained indefinitely. Retaining these documents in perpetuity could also allow firms to dispose of other related documents, such as calculations involving factors of safety, which can be recreated using information represented on the drawings and in the specifications. At a minimum, the documents should be retained until the statute of repose has passed. In jurisdictions where the statute of limitations is allowed to extend past the statute of repose, retention of these documents should also extend past the statute of repose.

Studies and Reports

In many engineering projects, the final product is represented by a study or report. Data supporting the conclusion(s) in a study or report is also frequently included with the study or report. The PLC recommends that reports and studies be retained indefinitely in hard copy and/or electronic format. Preliminary reports that are superseded by a final report or become obsolete do not need to be retained in perpetuity. It is recommended that preliminary reports be retained for at least seven years.

Calculations and Design Notes

The data collected by the PLC indicates that opinions concerning retention of calculations and design notes vary widely. Some studies and published reports recommended retaining these documents forever while others argued that retention either creates a liability or is redundant and unnecessary if design drawings are available.

The PLC recommends that firms establish a formal retention policy for calculations and design documents that clearly states whether or not these materials are retained or destroyed. Although the PLC does not recommend destruction of design calculations immediately upon completion of the project, if the firm chooses to destroy the documents after the completion of the project, a written policy that reflects this practice should be created, and the policy should be regularly enforced. If design calculations are retained, it is recommended that as a minimum, the documents should be retained until the statute of repose, and any extended statute of limitation, has passed.

Construction

Construction documents include, but are not limited to, field reports, shop drawings, correspondence with the contractor, checklists, and documentation of field tests. The engineer's role in construction oversight activities can vary widely for each project. Some contracts involve

limited construction services from the engineer while others directly involve the engineer, as is the case in design-build contracts.

A firm's retention policy for construction documents should be flexible enough to account for the varying degrees of involvement that an engineer has with the construction phase of the project. If the engineer is contracted solely to provide as-needed interpretation and clarification of construction drawing details, the need to retain construction-related documents is less significant. However, if the primary engineering service associated with a contract relates to the construction phase, more stringent retention policies should be instituted.

Regardless of the extent of construction-related service being provided by the engineer, liability on a construction project is generally shared with the contractor. Additionally, most contractors will also retain documents related to construction. For these reasons, document retention policies for some construction-related work might not need to be as stringent as those for design projects.

It is recommended that construction documents be retained for at least seven years past the date of substantial completion for projects where the involvement of the engineer is limited. On projects where the engineer's involvement was significant, documents should be retained until the end of the statute of repose. In areas where the statute of limitations is allowed to extend beyond the statute of repose, documents should be retained for that extended time period.

It should be noted that the guidelines for this type of document retention were intended to be applicable to projects where the engineering services are still primarily related to design. The guidelines are not intended for use in cases where the engineer is acting as the contractor. In those cases, since the primary service the engineer is providing is directly related to construction, more stringent retention policies should be employed.

Approvals and Reviews

Some types of approvals and reviews have already been covered in the other areas for which document retention policies were discussed. Shop drawing reviews and approvals of contractor pay requests, for example, fall into the Construction category. However, other approvals and reviews do not distinctly fit into the other areas being discussed by these guidelines. This section is meant to address those documents.

Many firms have internal policies related to review and approval of drawings and reports to ensure quality and check for potential design errors. Additionally, many clients require interim submittals on drawings and other products to either provide input and approval prior to final design or to review the product for quality and scope compliance. Approvals and reviews can also apply to products that are reviewed and approved by the engineer. This would include, for example, review of a substitute mechanical component, such as a pump, for compliance with the engineer's overall design. All of these types of documents fall into the category of approvals and reviews.

If approval of a specific design element or approach that is integral to the project was obtained by a client, that approval should be retained for the same duration as the design documents. This is especially important if approval was sought for a non-standard project approach or if an engineer

has documented limitations involved in a particular approach and requested acceptance of those limitation from the client.

If a firm has a documented internal quality control procedure that allows it to receive special or discounted consideration on its liability insurance premium, it is important that enough documentation be retained to show that the existing policy was followed. This does not mean that all documents related to the quality review be maintained. However, at a minimum, documentation on when the reviews were conducted and by whom should be retained along with the design documentation and for the same duration.

It should also be noted that there is an increased possibility for liability if a firm is found to have a formal quality assurance program and that firm cannot produce evidence that it followed those procedures on a particular project. This is another reason that documents providing evidence of adherence to internal formal programs need to be maintained.

Review and approval documents that do not involve specific design elements or are not critical to the overall product can be discarded upon completion of the project. This would include approval of a sub-consultant's pay request or approval of an interim design calculation for an element that was removed from the project.

Correspondence

There are many types of correspondence, including letters, e-mail, documentation of telephone conversations, meeting minutes, and written memos to the file. A good deal of this correspondence loses its significance either during or after project completion. The PLC recommends selective retention of project correspondence. Complete retention of all correspondence can significantly increase required storage and hinder the firm's ability to readily locate more critical documents if the volume of stored correspondence is significant.

Any correspondence that documents critical project details or direction should be maintained along with the design documents. Other correspondence that is deemed critical or contains information that cannot be derived from other documents should also be retained. The duration of retention should be consistent with that for design documents.

Other Retention Guidelines

Regardless of the document retention policy that is created, some additional standards should be followed:

1. Any document retention policy that is created should be followed consistently for every project. If deviation from the formal policy is made for a particular project, the firm should document why the deviation was made. If retention policies differ for different projects, that should also be included in the written policy.
2. If a policy is created that allows for destruction of documents, ensure that the document destruction is absolute and document the date of destruction.
3. Make sure that document retention policies are written, especially if the policy includes document destruction that otherwise might seem suspicious.
4. Ensure that individuals in charge of document retention or destruction are trustworthy, especially for confidential items, such as items related to lawsuits, payroll, or competitive information.
5. Ensure that stored documents are organized, labeled, secure, and easy to retrieve.
6. Do not destroy documentation after notice of a lawsuit has been served, regardless of the written policy related to those documents.

The guidelines offered in this paper are in no means intended to be used as a formal policy. Each firm should create a document retention policy that conforms to its individual needs and addresses its potentially unique liability concerns.

Note: As background, Professional engineers face a substantial degree of liability exposure for property damage, economic damages, bodily injury, and wrongful death resulting from their alleged negligence in the design of improvements to real property that has long since been completed, and for which the engineer should not reasonably be held responsible due to reasons outside his or her realm of control.

Most state legislatures have responded to this situation by adopting laws known as statutes of repose. Statutes of repose bar actions against design professionals after a certain period of time following the completion of services or the substantial completion of construction. Such statutes are based on the general legal principle that a potential defendant in a lawsuit should not be required to defend him/herself against “stale” claims that could easily be based upon faded memories, lost evidence, or witnesses who have since disappeared. For example, stale claims are a particular possibility in the construction industry, where the real property or facilities for which or to which services have been provided may last many decades, and during which time the engineer has had no control over operation and maintenance of the property or facility.

The language contained in statutes of repose and statutes of limitations is not universal and varies from state to state. It is strongly recommended that engineers and engineering firms familiarize

themselves with the statutes of repose and statutes of limitation in all states and jurisdictions in which they practice. For a review of statutes of repose and other liability law provisions affecting the practice of engineering, it is suggested that practitioners review “A State-by-State Summary of Liability Laws Affecting the Practice of Engineering,” 2012 NSPE, 1918-F For more information regarding this publication, please visit www.nspe.org.

Definitions

Statute of Repose: (1) Number of years after a project is completed after which the designers and contractors cannot be held responsible for damages or problems that may subsequently occur. (2) Time limit preventing injured parties from recovering from damages suffered as a result of defective or unsafe conditions in an improvement to real property (3) Statute effectively barring claims before they have arisen.

Statute of Limitation: (1) Limit on the amount of time that can pass between the injury and the filing of a lawsuit. (2) Statute effectively bars claims after they have arisen and a certain amount of time is passed.