



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: David K. Paylor, Director
Virginia Department of Environmental Quality

FROM: Matthew L. Gooch
Assistant Attorney General

DATE: December 9, 2013

RE: Exempt action amending regulations for federal documents
incorporated by reference, 9VAC5-50-, 4VAC5-60-.

I have reviewed the above-referenced amendments to the regulations of the State Air Pollution Control Board. The regulations were posted on the Virginia Regulatory Town Hall this morning. It is my opinion that the Board has the authority to adopt these amendments to the regulations based upon applicable law, including Article 1 of Chapter 13 of Title 10.1 of the Code of Virginia, and specifically, Code § 10.1-1308. The regulatory amendments do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor to conflict with any federal or state law currently in effect. Further, it is my opinion that, pursuant to Code § 2.2-4006(A)(4)(c), the amendments to the regulations qualify as exempt from Article II of the Administrative Process Act as necessary to meet the requirements of federal law or regulations, as they do not differ materially from those required by federal law or regulation.

This memorandum addresses legal matters only and is not intended to serve, nor should it be construed, as a comment for or against the merits of the proposed regulation.

If I may be of any further assistance to you relating to this matter, please do not hesitate to contact me.