



COMMONWEALTH of VIRGINIA
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MEMORANDUM

FROM: Michael A. Jagels
Senior Assistant Attorney General

TO: Michael Rolband, Director
Department of Environmental Quality

DATE: September 6, 2022

RE: Review of Proposed Changes to Regulations — 9 VAC 5-80

Please note that this memorandum does not constitute an opinion, formal or informal, of the Attorney General. Rather, this memorandum contains the legal analysis of the individual staff member providing it.

In response to a request from the Department of Environmental Quality, I have reviewed the above-referenced regulations of the State Air Pollution Control Board.

The Air Pollution Control Board has the authority to amend its regulations and establish general permits. See Va. Code § 10.1-1307. After reviewing the proposed amendments, it is my opinion that the Air Pollution Control Board has the authority to amend 9 VAC 5-80 (as well as 9 VAC 5-85 and 9 VAC 5-170).

Furthermore, these amendments are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. Therefore, in my view, the proposed amendments are exempt from the requirements of Article II of the Administrative Process Act under Va. Code § 2.2-4006(A)(4)(a).