

August 3, 2009

Karen Remley, M.D., M.B.A.
State Health Commissioner
Department of Health
109 Governor Street
Richmond, Virginia 23219

**Regulations for the Removal of Provisions for the Sanitary Control of the Picking, Packing
and Marketing of Crab Meat**

Dear Dr. Remley:

After reviewing the Department of Health's proposed repeal of regulations 12 VAC 5-130, 12 VAC 5-140, 12 VAC 5-160 and 12 VAC 5-180, I find, based on materials and documents provided to me by the Department of Health, that the regulations were never properly promulgated and were in fact erroneously certified to the Registrar of Regulations as being so. It appears that this erroneous certification was a technical error, pursuant to Virginia Code § 2.2-4006 (A)(3), and is qualified for exemption from the Administrative Process Act.

This will confirm that the Board possesses the authority to repeal these regulations pursuant to Va. Code § 2.2-4006 (A)(3), §2.2-4016 and Va. Code § 32.1-12. The purpose of this communication is to provide legal advice. To the extent that this communication may advise you that certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency or board and this communication should not be construed as a comment for or against the merits of such action.

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

Sincerely,

Karri B. Atwood
Assistant Attorney General

cc: Robert W. Hicks, Director, Office of Environmental Health Services
Dr. Robert Croonenberghs, Director, Division of Shellfish Sanitation