

MEMORANDUM

FROM: Paul Kugelman, Jr.
Senior Assistant Attorney General

DATE: June 25, 2019

RE: Authority to Revise Regulations - 9 Va. Admin. Code §§ 20-60 *et seq.*

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

The Virginia Waste Management Board (“Board”) is undertaking an action to revise 9 Va. Admin. Code §§ 20-60-18, -260, -261, -265, and -266 to come into conformity with some of the most recent rules that the EPA promulgated. The Board’s action also undertakes to revise 9 Va. Admin. Code §§ 20-60-328, -1430, and -1505 for the correction of technical errors.

It is my view that the Board has the authority to make the proposed revision to these regulations.

It is also my view that these proposed revisions to 9 Va. Admin. Code §§ 20-60-18, -260, -261, -265, and -266 may be exempted from the Virginia Administrative Process Act (“VAPA”) by operation of § 2.2-4006 of the *Code of Virginia*. These proposed revisions are for the purpose of coming into conformity with some of the most recent rules that the EPA promulgated. Code § 2.2-4006(A)(4)(c) exempts regulatory actions from the VAPA that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. While this appears to be the case here, for this exception to apply, the Registrar is required to make this determination in writing. *See id.*

Last, it is my view that the proposed revisions to revise 9 Va. Admin. Code §§ 20-60-328, -1430, and -1505 are exempted from the VAPA. These proposed revisions are for the purpose of correcting technical errors. Code § 2.2-4006(A)(3) exempts regulatory actions from the VAPA that “consist only of changes in style or form or corrections of technical errors.” *Id.*

The foregoing conclusion is my own. It does not constitute an opinion, formal or informal, of the Attorney General.