



# **COMMONWEALTH of VIRGINIA**

*Office of the Attorney General*

Mark R. Herring  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
804-371-8946 TDD

## **MEMORANDUM**

**To:** SANDRA J. ADAMS  
Commissioner  
Virginia Department of Agriculture and Consumer Services

**From:** JUSTIN I. BELL  
Assistant Attorney General

**Date:** March 29, 2016

**Subject:** Emergency Regulations Concerning Oxygenation of Gasoline

I have reviewed the emergency regulations concerning the inspection and testing of oxygenated gasoline.

Based on that review, it is my view that the Board of Agriculture and Consumer Services (the "Board"), pursuant to Va. Code § 59.1-156, has the authority to promulgate these regulations, subject to compliance with applicable provisions of Article 2 of the Administrative Process Act ("APA"), and has not exceeded that authority.

The authority for this emergency action is found in Va. Code § 2.2-4011, which provides that emergency regulations are "[r]egulations that an agency finds are necessitated by an emergency situation." The amendments to the regulations will enable the Board, to continue to inspect oxygenated gasoline in accordance with National Institute of Standards and Technology Handbook 130.

Accordingly, with the prior approval of the Governor, these regulations qualify for the "emergency" exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Board must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the "Agency Background Document." In addition, the regulations shall be effective for no more than 18 months from the emergency regulatory action on this subject matter. As the Board intends to continue regulating the subject matter governed by this emergency regulation beyond 18 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed

replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions, please contact me at 804-225-3373.

cc: Kristina Perry Stoney, Senior Assistant Attorney General & Section Chief