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Va. Code § 2.2-3705.1(2)

MEMORANDUM

FROM: Paul Kugelman, Jr.
Senior Assistant Attorney General

DATE: February 19, 2019

RE: Amendment – technical changes to 9 Va. Admin. Code § 20-90-40

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.

For the reasons explained herein, it is my view that the Virginia Waste Management Board (“Board”) is authorized to adopt the DEQ’s proposed amendment to 9 Va. Admin. Code § 20-90-40(B), and that the proposed amendment is exempted from the regulatory adoption process provided in the Virginia Administrative Process Act, §§ 2.2-4000 *et seq.* (“VAPA”).

It is my view that the Board has the authority to amend its regulations, *see* § 10.1-1402(11) (conferring the Board with the authority to, among other things, promulgate regulations “necessary to carry out its powers and duties and the intent of [the Virginia Waste Management Act] and the federal acts”), including making technical corrections to them.

In its current form, 9 Va. Admin. Code § 20-90-40 authorizes and directs the DEQ director to administer the Virginia Solid Waste Management Regulations “in accordance with the Virginia Solid Waste Management Act, §§ 10.1-1400 through 10.1-1457 of the Code of Virginia.” 9 Va. Admin. Code § 20-90-40(B). However, the Virginia Solid Waste Management Act is §§ 10.1-1400 through 10.1-1458. The proposed change simply reflects this.

It is also my view that this proposed amendment enjoys an exemption to Article 2 of the VAPA, which provides the process for amending and adopting regulations, because the proposed amendment is a correction of a technical error. The VAPA expressly provides for an exemption from its regulatory adoption process where proposed amendments “consist only of . . . corrections of technical errors.” § 2.2-4006(A)(3). The proposed amendment simply corrects a reference to the Virginia Solid Waste Management Act, §§ 10.1-1400 through 10.1-1458, to comport with the *Code of Virginia*. Hence the proposed amendment is a correction of a technical error and, consequently, enjoys the exemption provided in § 2.2-4006(A)(3).

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