



COMMONWEALTH of VIRGINIA

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Attorney General

June 17, 2009

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Mr. Charles L. Stiff, Chair
Safety and Health Codes Board
c/o C. Ray Davenport, Commissioner
Virginia Department of Labor & Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Re: Authority to adopt federal Access to Employee Exposure and Medical Records, 29 CFR 1910.1020; Repeal of the Virginia Access to Employee Exposure and Medical Records, 16 VAC 25-80-10

Dear Mr. Stiff:

I have reviewed the above-referenced regulations. I also have reviewed a document in which the Department of Labor and Industry analyzes the two regulations. That document concludes that the current Virginia standard is not "as effective as" the federal standard in several respects, in particular, the section about trade secrets makes 16 VAC 25-80-10 not "as effective as" the federal 29 CFR 1910.1020. You advised me that the Board wishes to revoke the Virginia regulation and adopt the federal regulation *in toto*.

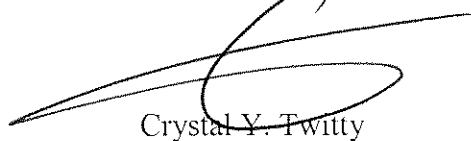
29 U.S.C. §667(c)(2) requires that state-adopted standards be "at least as effective in providing safe and healthful employment and places of employment" as the federal standards. Code § 40.1-22(5) authorizes the Board to adopt and repeal occupational safety and health standards "to effect compliance" with the federal OSH Act. The statute further requires that the Board's regulations be "at least as stringent as" the applicable federal standards.

Pursuant to Code § 2.2-4006.A.4.c., the revocation and adoption are excluded from the requirements of Art. 2 of the Administrative Process Act if they are necessary to meet the requirements of federal law or regulations, provided the regulations adopted do not differ materially from those required by federal law or regulations, and the Registrar of Regulations so determines in writing.

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The Board has the authority to adopt the federal Access to Employee Exposure and Medical Records regulation to supersede the current Virginia regulation. The Board may do so without recourse to the procedures of Art. 2 of the Administrative Process Act, provided that the Registrar of Regulations determines in writing that the regulation adopted does not differ materially from the federal regulation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Crystal Y. Twitty', written over a horizontal line.

Crystal Y. Twitty
Assistant Attorney General

cc: C. Ray Davenport, Commissioner
Regina P. Cobb, Agency Management Analyst, Sr.