

MEMORANDUM

FROM: Gray O'Dwyer
Assistant Attorney General

DATE: September 22, 2020

RE: Proposed Exempt Regulations - Articles 6, 7, 8 and 9 of 9VAC5-80, Part VI of 9VAC5-170

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.

It is my view that the Virginia Air Pollution Control Board ("Board") has the authority to promulgate these proposed changes to its regulations in Articles 6, 7, 8 and 9 of 9VAC5-80, and Part VI of 9VAC5-170.

It is also my view that this regulation is exempted from the Virginia Administrative Process Act, §§ 2.2-4000 *et seq.*, by its enabling legislation. Chapter 1110 of the 2020 Acts of Assembly amended Virginia Code § 10.1-1307.01 of the Virginia Air Pollution Control Law to add new public participation requirements. Virginia Code § 2.2-4006, subsection 4(a) exempts regulatory changes "[n]ecessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved."

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