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MEMORANDUM

FROM: Eric M. Lansing
Assistant Attorney General

TO: Michael Rolband, Director
Department of Environmental Quality

DATE: July 18, 2024

RE: Review of amendment to program coordinator fee in accordance with 2024 Acts of Assembly Chapter 634 (9VAC5-91-665) (Revision MS)

In response to a request from the Virginia Department of Environmental Quality, I have reviewed the above-referenced regulations of the State Air Pollution Control Board.

The State Air Pollution Control Board has the authority to amend its regulations. *See* Va. Code § 46.2-1180. After reviewing the proposed amendments, it is my opinion that the State Air Pollution Control Board has the authority to amend and reissue the above-referenced regulations. The proposed amendments do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect.

Furthermore, House Bill 213 (2024 Acts of Assembly Chapter 634) (approved April 8, 2024) makes this regulation “[n]ecessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.” Va. Code § § 2.2-4006(A)(4)(a).

Therefore, provided that this regulatory amendment becomes effective no earlier than July 1, 2024, the proposed amendments are, in my view, exempt from the requirements of Article 2 of the Administrative Process Act. *Id.*