



**COMMONWEALTH of VIRGINIA**  
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MEMORANDUM

FROM: Jackson Brown  
Assistant Attorney General

TO: Glenn Davis, Director  
Department of Energy

DATE: September 27, 2024

RE: Review of Final Regulation — Regulatory action to reflect updated Code of Virginia related to Mineral Mines Farm Pond Construction or Expansion (amending 4 VAC 25-31-70)

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*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.*

In response to a request from the Department of Energy, I reviewed the above-referenced regulations of the Department of Energy.

The Department has the authority to amend and reissue 4 VAC 25-31-70 pursuant to § 45.2-103(4) of the Code of Virginia and Chapter 224, enactment 2 of the 2024 Acts of Assembly. After reviewing the final regulation, it is my opinion that the Department has the authority to so amend and reissue 4 VAC 25-31. It is also my opinion that the final regulation is exempt from the Administrative Process Act pursuant to §2.2-4006(4)(a) of the Code of Virginia.