



**COMMONWEALTH of VIRGINIA**  
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**MEMORANDUM**

**TO:** David Paylor, Director  
Virginia Department of Environmental Quality

**FROM:** Matthew L. Gooch  
Assistant Attorney General

**DATE:** March 29, 2016

**RE:** Regulatory amendments removing affirmative defense from the malfunction provisions of General Provisions in accordance with federal requirements, 9VAC5-20.

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I have reviewed the above-referenced amendments to the regulations of the State Air Pollution Control Board. It is my opinion that the Board has the authority to adopt these regulations based upon applicable law, including Article 1 of Chapter 13 of Title 10.1 of the Code of Virginia, and specifically, Code § 10.1-1308. The regulations do not exceed the Board's rulemaking authority. It is further my opinion that this action is exempt from Article 2 of the Administrative Process Act, pursuant to Code § 2.2-4006(A)(4)(c), because the regulations are necessary to meet the requirements of federal law or regulations and do not differ materially from those required by federal law or regulation.

If I may be of any further assistance to you relating to this matter, please do not hesitate to contact me.