



COMMONWEALTH of VIRGINIA
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October 27, 2003

The Honorable Robert G. Burnley, Director
Department of Environmental Quality
Commonwealth of Virginia
629 East Main Street
Richmond, Virginia 23219

Re: Emergency Regulation Amendments Concerning NOx Budget Trading
Program (9 VAC 5 Chapter 140, Revision F02)

Dear Mr. Burnley:

I have reviewed the above-referenced emergency regulation amendments. I have also reviewed Paragraph D of Item 383 of Chapter 1042, 2003 Acts of Assembly.

It is my view that the State Air Pollution Control Board, contingent on approval by the Governor, has legal authority to promulgate subject emergency regulation amendments.

The purpose of this communication is to provide legal advice. To the extent that this communication may advise you that certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency or board and this communication should not be construed as a comment for or against the merits of such action.

Sincerely,

Carl Josephson
Assistant Attorney General