



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*

Mark R. Herring  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

**MEMORANDUM**

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

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

**DATE:** October 8, 2015

**RE:** Amendments to the regulation for case-by-case RACT  
determination, Article 51, 9VAC5-40

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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.