

MEMORANDUM

FROM: Jerald R. Hess
Assistant Attorney General

DATE: April 30, 2021

RE: Proposed Exempt Regulations - 9 Va. Admin. Code 5 §§ 145-100 *et seq.*

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.

It is my view that the State Air Pollution Control Board (“Board”) has the authority to promulgate these proposed regulations in 9 Va. Admin. Code 5 §§ 145-100 *et seq.*

It is also my view that these regulations are exempted from the Virginia Administrative Process Act, §§ 2.2-4000 *et seq.* by its enabling legislation. Item 378 B in Chapter 56 of the 2020 Special Session I Acts of Assembly requires the Board to adopt such regulations and states, “[t]he regulations adopted by the State Pollution Control Board to initially implement the provisions of this item shall be exempt from Chapter 40 of Title 2.2, Code of Virginia....” Thus, these initial regulations are exempt from the Virginia Administrative Process Act.

The foregoing conclusion is my own. It does not constitute an opinion, formal or informal, of the Attorney General.