



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

Jerry W. Kilgore
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
804-371-8947 TDD

November 29, 2004

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

Re: Authority to Promulgate Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, 9 VAC 25-31, Final

Dear Director Burnley:

I have reviewed the above-referenced regulation. It is my opinion that the State Water Control Board has authority to promulgate such amendments under applicable law, including Chapter 3.1 of Title 62.1 of the Code of Virginia. Based upon your agency's representations, it is my opinion that under Va. Code § 2.2-4006.A.4(a) the regulations are excluded from Article 2 of the Virginia Administrative Process Act because they are necessary to conform to changes in Virginia statutory law or the appropriations act where no agency discretion is involved.

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

Sincerely,

Cathie F. Hutchins
Assistant Attorney General
Environmental Unit

cc: Ellen Gilinsky
Cindy Berndt