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MEMORANDUM

FROM: Michael A. Jagels
Senior Assistant Attorney General

TO: Michael Rolband, Director
Department of Environmental Quality

DATE: September 16, 2022

RE: Review of Proposed Changes to Regulations — 9 VAC 25-260

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.

In response to a request from the Department of Environmental Quality, I have reviewed the above-referenced regulations of the State Water Control Board.

The State Water Control Board has the authority to amend its regulations and establish general permits. See Va. Code § 62.1-44.15. After reviewing the proposed amendments, it is my opinion that the State Water Control Board has the authority to amend 9 VAC 25-260. The proposed amendments adopt new, update, or cancel existing water quality standards as required by § 62.1-44.15 of the Code of Virginia and the federal Clean Water Act, 33 U.S.C. §§ 1251.

Furthermore, this rulemaking is needed because the last triennial review was completed in July 2017 and new scientific information is available to update the water quality standards. Changes to the regulation are also needed to improve permitting, monitoring and assessment programs. In addition, the State Water Control Board (Board) must fulfill the legal mandates for a three-year review under the Code of Virginia, per §62.1-44.15(3a), and federal regulations at 40 CFR 131.