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MEMORANDUM

FROM: Katherine E. Kulbok
Assistant Attorney General

TO: Michael Rolband, Director
Department of Environmental Quality

DATE: October 4, 2022

RE: Review of Proposed Changes to Regulations — 9 VAC 25 - 790

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. *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 - 790.

Furthermore, these amendments are necessary to conform to changes in Virginia law where no agency discretion is involved and consist only of changes in form or corrections of technical errors. Therefore, in my view, the proposed amendments are exempt from the requirements of Article II of the Administrative Process Act under Va. Code § 2.2-4006(A)(4)(a).