



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: Michael Rolband, Director
Department of Environmental Quality

FROM: Darrell W. Kuntz, III
Assistant Attorney General

DATE: July 12, 2023

RE: Review of Final Exempt Amendment to Virginia Water Protection Permit Program Regulations in Response to 2023 Virginia Acts of Assembly for 9VAC25-210.

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 (“DEQ”), 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 of the Code of Virginia. The State Water Control Board has the additional authority to pass regulations “necessary to conform to changes in Virginia statutory law.” Virginia Code § 2.2-4006(A)(4)(a).

Based on my review of the final regulations, it is my opinion that the State Water Control Board has the authority to amend the Virginia Water Protection Permit Program Regulations in response to Chapters 245, 258 and 259 of the 2023 Virginia Acts of Assembly (HB1804). It is also my opinion that the regulations are exempt from Article 2 of the Administrative Process Act pursuant to Virginia Code § 2.2-4006(A)(4)(a), as this amendment is necessary to bring the Regulations into compliance with Virginia statutory law.