



COMMONWEALTH of VIRGINIA
Office of the Attorney General

Jason S. Miyares
Attorney General

202 North 9th Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

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 Amendments to Virginia Erosion and Sediment Control Regulation (9VAC25-840), Virginia Stormwater Management Program Regulation (9VC25-870) and VPDES Permit for Discharges of Stormwater from Construction Activities (9VC25-880) in response to 2023 Virginia Acts of Assembly.

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 so amend Virginia Erosion and Sediment Control Regulation (9VAC25-840), Virginia Stormwater Management Program Regulation (9VC25-870) and VPDES Permit for Discharges of Stormwater from Construction Activities (9VC25-880) in response to Chapters 48

and 49 of the 2023 Virginia Acts of Assembly (HB1848 and SB1376). 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 these amendments are necessary to bring the Regulations into compliance with Virginia statutory law.