



# COMMONWEALTH of VIRGINIA


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## MEMORANDUM

**TO:** Marissa J. Levine, MD, MPH  
Commissioner, Department of Health

**FROM:** Grant E. Kronenberg   
Assistant Attorney General

**DATE:** January 27, 2017

**SUBJECT:** Periodic Review of Regulations  
Private Well Regulations, 12VAC5-630-10 *et seq.*

In accordance with Code of Virginia § 2.2-4017 and Executive Order 17 (2014), I have reviewed the Private Well Regulations, 12VAC5-630-10 *et seq.* These regulations are undergoing periodic review.

In my opinion, the Board of Health had the statutory authority under Code of Virginia §§ 32.1-12 and 32.1-176.4 to adopt the current regulations, with one exception. The provision of the regulations at 12VAC5-630-220(B) provides dewatering wells with certain exemptions from the regulatory requirements, including certain permitting requirements. Code of Virginia § 32.1-176.4(A) states that the "Board [of Health] shall adopt regulations pertaining to the location and construction of private wells in the Commonwealth." Additionally, Code of Virginia § 32.1-176.5(A) states, "Any person intending to construct a private well shall apply to the Department for and receive a permit before proceeding with construction." I do not find statutory authority for providing an exemption in the regulations from the construction permitting requirement for dewatering wells that are private wells. I recommend that the regulation be amended so that the statutory requirements with respect to construction permits are applied to private dewatering wells.