



**COMMONWEALTH of VIRGINIA**  
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**MEMORANDUM**

**TO:** David Paylor, Director  
Virginia Department of Environmental Quality

**FROM:** Matthew L. Gooch  
Assistant Attorney General

**DATE:** June 22, 2015

**RE:** Defer the implementation of federal emission standards for wood heaters to EPA, Article 5 (9VAC5-50-400 et seq.) of 9VAC5-50.

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Pursuant to Executive Order 17, I have reviewed the above-referenced amendments to regulations of the State Air Pollution Control Board. It is my opinion that the Board has the authority to adopt these amendments to the regulations based upon applicable law, including Article 1 of Chapter 13 of Title 10.1 of the Code of Virginia, and specifically, Code § 10.1-1308. The regulations do not exceed the Board's rulemaking authority.

It is further my opinion that the regulations are exempt from Article 2 of the Administrative Process Act pursuant to Code § 2.2-4006(A)(4)(a) as necessary to conform to changes in Virginia statutory law where no agency discretion is involved.

If I may be of any further assistance to you relating to this matter, please do not hesitate to contact me.