



**COMMONWEALTH of VIRGINIA**  
**Office of the Attorney General**  
**Richmond 23219**

**Kenneth T. Cuccinelli, II**  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
804-371-8947 TDD

June 15, 2011

The Honorable David K. Paylor, Director  
Virginia Department of Environmental Quality  
629 East Main Street  
Richmond, Virginia 23219

Re: Authority to Promulgate Exempt Final Regulation D11,  
9 VAC 5-40 – Existing Stationary Sources (Primary Action),  
9 VAC 5-50 – New and Modified Stationary Sources,  
9 VAC 5-130 – Regulation for Open Burning

Dear Director Paylor:

I have reviewed the above-referenced regulations. It is my opinion that the State Air Pollution Control Board has authority to promulgate these regulations under applicable law, including Chapter 13 of Title 10.1 of the Code of Virginia and that the proposed amendment comports with applicable state law. Further, it is my opinion that the regulation meets the exemption set forth in Va. Code § 2.2-4006(A)(3) as necessary to correct technical errors.

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

Sincerely,

A handwritten signature in cursive script that reads "Kerri L. Nicholas".

Kerri L. Nicholas  
Assistant Attorney General