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MEMORANDUM

FROM: Eric Lansing
Assistant Attorney General

TO: Brandon Bull, Director of Policy
Virginia Department of Environmental Quality

COPY: Michael Rolband, Director
Department of Environmental Quality

DATE: March 6, 2025

RE: Review of "Amend existing regulation to modify the exemption for agricultural use incinerators" (Rev. A25): 9VAC5-80-1105

In response to a request from the Virginia Department of Environmental Quality, I have reviewed the above-referenced regulations of the State Air Pollution Control Board (the Board).

The Board has the authority to amend its regulations, Va. Code § 10.1-1308, and this regulation in particular is mandated by Senate Bill 1495 (2025), which Governor Youngkin signed into law on March 21, 2025. After reviewing the proposed amendments, it is my opinion that the Board has the authority to amend and reissue the above-referenced regulations as provided. The proposed amendments do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect.

Furthermore, these amendments are necessary to conform to S.B. 1495, and that bill leaves the Board with no agency discretion. Therefore, in my opinion, the proposed amendments are exempt from the requirements of Article II of the Virginia Administrative Process Act by § 2.2-4006(A)(4)(a) of the Code of Virginia.