



COMMONWEALTH of VIRGINIA
Office of the Attorney General

Jason S. Miyares
Attorney General

202 N. 9th Street
Richmond, Virginia 23219
(804) 786-2071
Fax (804) 786-1991
Virginia Relay Services
800-828-1120
7-1-1

MEMORANDUM

FROM: Eric M. Lansing
Assistant Attorney General

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

DATE: May 12, 2025

RE: Review of amendment to existing regulations regarding the use of emergency generators at certain military installations (Rev. B25): 9VAC5-80-1111 of 9VAC5-80; 9VAC5-540-40 of 9VAC5-540

In response to a request from the Virginia Department of Environmental Quality (DEQ), I have reviewed the above-referenced DEQ regulatory amendments.

After reviewing the proposed amendments, it is my opinion that DEQ has the authority to amend and reissue the above-referenced regulations, pursuant to Chapter 344 of the 2025 Acts of Assembly, Senate Bill 1407 (2025 Regular Session) (hereinafter "S.B. 1407"), which the Governor signed into law on March 21, 2025. 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. The regulatory amendments do not differ materially from the requirements of federal law.

S.B. 1407 also provides that the “incorporation and promulgation” of the above-referenced regulations “shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and shall become effective upon submission for publication in the Virginia Register of Regulations.” The Administrative Process Act (APA) itself likewise contains similar provisions that exempt this regulation from Article II of the APA, which governs the promulgation of regulations. *See* Va. Code § 2.2-4006(A)(4)(a). Accordingly, the promulgation of the above-referenced regulations is exempt from the APA.