



**COMMONWEALTH of VIRGINIA**  
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MEMORANDUM

FROM: Ross Phillips  
Senior Assistant Attorney General, Chief

TO: Michael Rolband, Director  
Department of Environmental Quality

DATE: July 6, 2023

RE: Review of Proposed Regulations for reissuance of Virginia Pollutant Discharge Elimination System General Permit Regulation for Discharges of Stormwater from Construction Activities — 9 VAC 25-880

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*Please note that this memorandum does not constitute an opinion, formal or informal, of the Attorney General. Rather, this memorandum contains the legal analysis of the individual staff member providing it.*

In response to a request from the Department of Environmental Quality, I reviewed the above-referenced regulations of the State Water Control Board.

The State Water Control Board has the authority to amend its regulations. *See* Va. Code § 62.1-44.15 of the Code of Virginia. Based on my review of the proposed regulations, it is my opinion that the State Water Control Board has the authority to so amend and reissue 9 VAC 25-880. It is also my opinion that the proposed regulations are for a general permit and, therefore, exempt from Article 2 of the Administrative Process Act pursuant to Va. Code § 2.2-4006(A)(8).