



**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:** November 16, 2017

**RE:** Update state regulations that incorporate by reference certain federal regulations to reflect the current Code of Federal Regulations. (Rev. E17)

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I have reviewed the above-reference regulatory amendments adopted today by the State Air Pollution Control Board. It is my opinion that the Board has the statutory authority to adopt these 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 this action is exempt from Article 2 of the Administrative Process Act because the regulations are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the applicable federal requirements. Va. Code § 2.2-4006(a)(4)(c).

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