

## MEMORANDUM

**FROM:** Christopher E. Bergin, Jr.  
Assistant Attorney General

**DATE:** October 20, 2021.

**RE:** Review of Proposed Changes to Regulations — 9 Va. Admin. Code § 20-85 *et seq.*

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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.*

The Virginia Waste Management Board (“Board”) has proposed to amend 9 Va. Admin. Code § 20-85 *et seq.*

The Board has the authority to amend its regulations. *See* Va. Code § 10.1-1402 (11) (conferring the Board with the authority to, among other things, promulgate regulations “necessary to carry out its powers and duties and the intent of the [Virginia Waste Management Act] and the federal acts.”).

After reviewing the proposed amendments, it is my opinion that the Board has the authority adopt the proposed regulatory amendments contained in 9 Va. Admin. Code § 20-85 *et seq.*

Furthermore, it is my view that the proposed amendments are necessary to conform to changes in Virginia statutory law, where no agency discretion is involved. *See* 2021 Va. Acts Ch. 532 (renaming “the Department of Mines, Minerals and Energy” to “the Department of Energy”). Therefore, it is my view that the proposed amendments are exempt from the requirements of the Virginia Administrative Process Act under Va. Code § 2.2-4006(A)(4)(a).

The foregoing conclusion is my own. It does not constitute an opinion, formal or informal, of the Attorney General.