

MEMORANDUM

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

DATE: October 20, 2021

RE: Review of Proposed Changes to Regulations — 9 Va. Admin. Code § 20-60 *et seq.*

In advance of the next board meeting, the Department of Environmental Quality (“DEQ”) has asked whether the Virginia Waste Management Board (“Board”) has the statutory authority to amend 9 Va. Admin. Code § 20-60 *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 § 20-60 *et seq.*

Furthermore, it is my view that the proposed amendments are necessary to correct technical errors and to conform to changes in the federal regulations where no agency discretion is involved. 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)(3) and (4).

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