



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: September 12, 2016

RE: Amendments federal operating (Title V) permit regulations to
remove an impermissible affirmative defense, 9VAC5-80, 9VAC5-
80

I have reviewed the above-referenced amendments to the regulations of the State Air Pollution Control Board. It is my opinion that the Board has the 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, pursuant to Code § 2.2-4006(A)(4)(b), because the regulations are necessary to conform to an order of a federal court of competent jurisdiction where no agency discretion is involved.

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