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Melissa Porterfield  
Virginia Department of Environmental Quality  
629 E. Main Street  
Richmond, Virginia 23219

Re: Proposed Amendments to the  
Groundwater Withdrawal Regulations  
9 VAC 25-610 *et seq.*

Dear Ms. Porterfield:

Thank you for the opportunity to provide written comments on the proposed regulatory amendments referenced above. Mission H<sub>2</sub>O is a stakeholder group focused on water supply issues in Virginia. Our membership consists of water users, water providers, and water supply professionals. Groundwater is an important component of Virginia's water supply equation. Mission H<sub>2</sub>O was an active participant on the regulatory advisory panel for these proposed amendments and offers the following comments.

### **General Comments**

Since the drought that affected Virginia in the early 2000s, Virginia has taken more proactive steps to manage its water resources. In addition to updating various regulatory programs (water reclamation and reuse, groundwater withdrawal, water withdrawal reporting, etc.), Virginia embarked on a water supply planning process. While all of these programs are important aspects of a cohesive water resource management program, there is a need to ensure that the programs do not impose duplicative or conflicting requirements.

The groundwater withdrawal regulations impose significant requirements associated with permit withdrawal applications. Many of these requirements are duplicative of plans, evaluations or alternative studies associated with the water supply planning process, particularly for local government water providers. To the extent the groundwater withdrawal regulations duplicate the requirements of the water supply planning regulation, those requirements should be waived or at least allow the applicant to cross reference the previously submitted documents.

Similarly, the regulation includes a definition for “human consumption” and identifies priority of uses. The Virginia Code already includes such definitions and priorities. Accordingly, the language of the regulation should be identical to that in the Code, or should be removed as redundant of the language already in the Code.

The current groundwater permitting system addresses permit applications as they are submitted, rather than evaluating the water withdrawals as a whole. The goal of the water supply planning process (and the purpose of designating a groundwater management area) was to encourage users of the same water source to work together to develop a plan for how best to meet the water needs in the area in the future. Likewise, reviewing permit applications in tandem allows for a more comprehensive and collaborative approach to data gathering and resource management. Mission H<sub>2</sub>O encourages DEQ to consider changes to the regulation to allow for more meaningful collaboration among water users. Such collaboration is more likely to lead to a data gathering plan and water allocation options that are consistent with the preservation of beneficial uses and sustainable management of the resource.

### **Specific Comments**

Section 9 VAC 25-610-94 refers to “reapplication for a current permitted withdrawal.” This language is confusing. Is this in essence a permit renewal? If so, permit renewal is the term that should be used. For permit renewals that do not seek to expand the withdrawal amount, there are a number of items specified in this section that are not applicable. For example, item 2.i. requires notification from a local governing body that the withdrawal is in compliance with all local ordinances. If the withdrawal has been previously permitted, it is unnecessary to obtain this certification. Likewise, other requirements in this suggestion (*i.e.*, section 2.e (well construction report)) are not applicable to permit renewals as that information would have been provided when the withdrawal was initially permitted. The evaluation should be more focused



on actual water usage (to determine whether there is a need for the full permitted amount) and the impact of that usage.

Likewise, many of the components in the water withdrawal permit application are duplicative of analyses a locality is required to develop as part of its water supply plan. Accordingly, where the applicant has already made a submission pursuant to 9 VAC 25-780 *et seq.*, the requirements of 9 VAC 25-610-94. 2.h, j, and k should be waived.

Although 9 VAC 25-61-94.4 states that the Board can waive certain application requirements if it has access to “substantially identical information that remains accurate and relevant to the permit application,” it is unclear how the waiver process will work. Rather, renewal applicants should be exempted from some of the information requirements or required to submit them only if anything has changed. The same comment applies to 9 VAC 25-610-96.C. Where possible, the permit renewal process should be streamlined and simplified.

Section 9 VAC 25-610-100.B states that water conservation plans must be consistent with local and regional water supply plans in the applicant’s geographic area. This is not appropriate, particularly for industrial and agricultural withdrawers whose information and future plans may not be captured in those plans, which are prepared by localities. There may be conflicts between the entities preparing the plans and the entities using the water in the area. Those conflicts will likely be resolved at the state level rather than in the local and regional plans.

Also, throughout 9 VAC 25-610-100 there are requirements relating to evaluation of water reuse options, including a requirement that “water shall be reused in all instances where reuse is practicable.” “Practicable” is defined at 9 VAC 25-610-10 as “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” There may be situations where reuse is technically and financially feasible but the regulatory program is not in place to allow it. There may also be situations where reuse is technically and economically feasible but the industrial process requires food grade quality in the water used and thus reuse is not a workable option. Finally, there may be situations in which reuse is not an option because it will deplete a return flow needed downstream. This phrase should be deleted. If the economics of reuse work, the applicant will consider reuse on its own merits. Requiring an evaluation of potential reuse options is sufficient,

especially as reuse should be evaluated as part of the alternative analysis required by 9 VAC 25-610-106.

The water conservation and management plans required by 9 VAC 25-610-100 should not become an enforceable part of the groundwater withdrawal permit. The permit term is ten years; during this time period changes may occur or new information may become available that leads to changes in the water conservation and management plan. Moreover, some of those plans may call for measures that are beyond the withdrawers control, particularly where the withdrawer does not have the ability to implement or enforce local ordinances. This section should be modified to require the development and submission of a water conservation and management plan, and the resubmission of such plan if changes to the plan are made during the permit term.

Section 9 VAC 25-610-100.B.1.a requires the use of water saving equipment by all water uses. This requirement is unduly burdensome and impossible in many instances to implement. Some water providers do not have control over the development and/or enforcement of local ordinances. Additionally, the sentence “These requirements shall assure that the most practicable use is made of groundwater” does not make sense in light of the definition of “practicable” found at 9 VAC 25-610-10. This section could be rewritten as follows:

Where practicable, the plan should require the use of water saving equipment and processes for all water users including technological, procedural or programmatic improvements to the facilities and processes to decrease the amount of water withdrawn or to decrease water demand. The goal of these requirements is to assure the most efficient use of groundwater.

Local water supply plans are required to include an evaluation of need for the withdrawal and evaluate alternative water sources. Accordingly, the requirement of 9 VAC 25-610-102 to conduct an evaluation of need for the withdrawal and alternatives should be waived where such an analysis has already been completed as part of the water supply planning process.

Sections 9 VAC 25-610-110.D.3.(a) - (f) appear redundant of the application requirements. Before an application is deemed complete, all of this information must be provided. It seems unnecessary to list it here, given that the regulation already states that the

Board's determination will be based on a complete application that includes all of this information.

Section 9 VAC 25-610-140.A.12 relates to well identification plates. There should be some flexibility in how the identification information is provided for groundwater wells. As long as the identification number is provided in a permanent, legible fashion, there should not be any other requirement. There have been significant costs and logistical difficulties in obtaining and maintaining the well identification plates required in the current regulation.

For the reasons discussed above, failure to implement a water conservation and management plan should not be a ground for denying a permit application. *See* 9 VAC 25-610-340.A.4. Such a requirement is impossible for entities with withdrawal permits that do not have the ability to control and/or enforce local ordinances.

Thank you again for the opportunity to provide these comments. Mission H<sub>2</sub>O looks forward to continuing to work with DEQ on this important issue.

Sincerely,



Andrea W. Wortzel

cc: Mission H<sub>2</sub>O Members