



February 4, 2022

Honorable Members of the Virginia Senate

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Re: Oppose confirmation of Andrew Wheeler for Secretary of Natural and
Historic Resources; Preserve Citizen Boards

Dear Senators:

Board of Directors:

I write on behalf of Wild Virginia with two requests, as explained below.

First, we urge all Senators to reject the nomination of Andrew Wheeler for Secretary of Natural and Historic Resources. We are aware that the Committee on Privileges and Elections voted against Mr. Wheeler's confirmation and we urge you to support that decision, should it be subject to further action.

Second, we encourage you to preserve the system of citizen board oversight of environmental regulatory programs. Please reject proposals to strip our system of this valuable feature, through which the regulatory decisions benefit from the various perspectives and values of people with different backgrounds and experiences.

Both of these choices are about much more than environmental philosophies or policies. They are about good government and are essential to preserving the rights and interests of all Virginians.

The Wheeler Nomination

Virginians faced a similar decision about a high-level appointment decades ago and the outcome at that time was disruptive and harmful. We ask that our lawmakers draw on that past experience and act strongly now, to prevent damage to our regulatory systems and a weakening of environmental protections that would surely result.

In the 1990s, we had a Secretary of Natural Resources who was hostile to the very mission the state agencies under her command were created to serve. She did serious damage to those agencies and to the abilities of career employees to perform effectively and honestly.

Mr. Wheeler, Governor Youngkin's nominee for that same cabinet job, poses the threat of a return to those dark days—of damages to the integrity of the regulatory systems he would oversee. His history of hostility to the environmental protections in the law and subversion of fair and open government processes portends a future that is frightening to contemplate and one we must avoid.

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The reports of Wheeler's misdeeds at the U.S. EPA, which prompted more than 150 people who had worked at that agency to urge his rejection now,¹ are all too reminiscent of those we saw in our state government during that former period.

Career employees, some who had worked under numerous administrations, saw Wheeler as an extremist who favored polluters over the environment and the general public; who sought to hide or skew scientific information to meet an agenda; and who prevented experts from doing their jobs honestly and effectively. In other words, they describe an ideologue who led an attack on the structures that must be maintained to carry out the laws, no matter what party or President is in power.

The Chaos of the Allen Administration

We remind lawmakers and all our fellow Virginians of the disarray and discord that resulted from former Governor George Allen's choice to head the Natural Resources secretariat. Becky Norton Dunlop was an ideologue whose career was built on opposition to our most basic and cherished environmental laws. In service to that extreme ideology, Dunlop led a process aimed at weakening the enforcement of those laws and hamstringing regulators' abilities to fulfill their legal obligations.

I can speak from personal experience. I worked in state water quality agencies under a series of Virginia Governors, from the early eighties through 1995. Beginning in 1994, things changed drastically in the Department of Environmental Quality. Under the leadership of Secretary Dunlop and a series of political hires at DEQ, many of us were faced with orders to betray our statutory duties and hide information or mislead the public and decision makers about the science and the facts.

The record from that time is replete with evidence of the systematic subversion of resource agency programs. The following is just a small sampling of the misdeeds and failures uncovered.

Official State Reviews

Studies of DEQ operations by the non-partisan Joint Legislative Audit and Review Commission (JLARC) found serious problems at the agency. JLARC's general statement about DEQ in one of those reports was devastating.

At present, DEQ is not fulfilling many of the goals that the General Assembly established for it when the agency was created in 1993. Indeed, **DEQ's current focus appears to lack commitment to the agency's core statutory goals of protecting the State's environment from impairment.** Most significantly, DEQ is not meeting its statutory and constitutional mandate to protect State waters from impairment.²

¹ Sarah Rankin, AP News, [Ex-EPA workers ask Virginia senators not to confirm Wheeler](#), January 14, 2022.

² JLARC, [Review of the Department of Environmental Quality](#), January 15, 1997, p. II (emphasis added).

Among numerous specific problems JLARC uncovered were findings that:

- When asked whether they thought their jobs could be at risk if they made a compliance or enforcement recommendation or decision in accord with the law "but which raises concern among one or more members of the regulated community," nearly a third of all environmental inspectors surveyed said "yes."
- Serious violations, many of which were intentionally committed by polluters, were "not being adequately addressed through penalties." JLARC said this failure "may partially result from the fear of retaliation."

Employee Complaints

Career employees at DEQ and other agencies were prevented from doing the jobs that many had been devoted to for decades. Many scientists and regulatory specialists were driven out of state service or had their duties changed in ways that severely limited their effectiveness.

- Validating employee's fears about the risks from management if they faithfully enforced the law, as noted above, respondents to a survey by a non-profit group found that more than half of supervisory level DEQ employees said they had been "directed to disregard an environmental rule or regulation during the first two years of the Allen administration." Thirty percent of employees at all levels in DEQ said the same.³
- According to reporting on that same survey: "Nearly 80 percent of employees asserted that 'hiring under Allen is based on political patronage rather than professional merit,' with fully 100 percent of managers concurring."

The U.S. EPA

During Secretary Dunlop's tenure, the U.S. Environmental Protection Agency (EPA) was compelled to take actions to ensure federal laws were obeyed, because the state was failing in those duties. As recounted in one news article at the time:

"I think that it is unfortunate that you have a lack of leadership in the state," said Carol M. Browner, Administrator of the E.P.A. "There is a disregard for the requirements of Federal laws, and I think there is a belief on the part of some in Virginia that ignoring the environment and public health standards is what the business community wants."⁴

One instance of the state's failure was raised by conservation groups but also caused regulated industries serious concerns. All sectors recognized that disruptions caused by the state's position could carry a great and unnecessary cost, to the environment and to industry.

- Virginia's air pollution permitting program, which the state operates under delegation from the EPA, had the distinction of being the only state program which the federal agency formally disapproved. EPA threatened that if Virginia

³ Peter Baker, Washington Post, [Senior Workers Criticize VA. Environmental Chief](#), March 21, 1996.

⁴ John H. Cushman, Jr., The New York Times, [Virginia Seen as Undercutting U.S. Environmental Rules](#), January 19, 1997.

refused to change policies that violated the Clean Air Act, the state's permitting authority could be withdrawn.⁵

Again, there are many other stories of the damage a Secretary did to our system of environmental protections, providing a warning of what could occur if Wheeler's nomination is approved.

Retain the Value of Citizen Oversight Boards

A vital feature of Virginia's regulatory system is that it gives regular citizens, with a variety of backgrounds and perspectives, authority to guide our programs and make important decisions affecting us all. This structure insulates our environmental management process from drastic swings that could occur with each new administration. It provides a chance for the public to be heard alongside agency officials and for the Board members to see sometimes starkly conflicting stories and weigh their respective values.

A series of bills currently proposed would weaken this valuable system and we strongly urge you to reject each of them.

In the Senate:

SB657 -

The measure would strip the Air and Water Boards' permitting authorities and much more. The Air Board could no longer consider the suitability of the activity to the area where the proposed project is to be sited, leaving residents' interest unprotected. The public could no longer request public hearings from the Air or the Water Boards. And the Boards could no longer initiate requests of the Department of Environmental Quality. The most important environmental permits would be discussed and decided behind the closed doors of the agency.

SB81 -

We oppose Senate Bill 81, based on the following considerations:

- the bill would remove "site suitability" considerations from the Air Pollution Control Board's regulations and permitting authority, meaning the Board could no longer consider important factors in siting air emissions sources, including:
 - o the potential for interference with safety, health, or the reasonable use of property
 - o the social and economic value of the activity
 - o the suitability of the activity to the area
 - o the practicality of reducing pollution from the activity
- Site suitability considerations are fundamental to protecting communities from air emissions sources that are not well-suited to an area
- The Department of Environmental Quality (DEQ) is in the middle of a regulatory proceeding on site suitability; allow that process to conclude
- These considerations have only been used two times in 55 years to deny an air permit

⁵ Richard Stradling, Daily Press, [EPA May Take Over State Air Pollution Program](#), September 21, 1995.

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Based on similar concerns, we encourage you to reject the following bills now being considered in the House of Delegates, should they move to the Senate:

HB1261 - removes authority of citizen boards to issue any environmental permit, or abridge or deny any environmental permit issued by the Department of Environmental Quality.

HB1204 - removes the authority of the State Air Pollution Control Board to issue, deny, renew, amend, or extend a minor new source review air permit. The bill provides that the Executive Director of the Department of Environmental Quality has such authority to issue, deny, renew, amend, or extend a minor new source review air permit. The bill provides that any other rules or regulations governing such permitting process shall continue to apply.

Conclusion

No matter who is finally approved for the Natural Resources post, conservation advocates fully understand that the person will pursue Governor Youngkin's policy priorities. We believe some of those, including retrenchment on commitments to vigorously combat climate change, are deeply flawed. However, we also know this administration has the power to take a range of actions with which we may disagree, as long as they abide by the law in doing so.

With those understandings, we can and will vigorously debate such policy choices and specific decisions that grow out of them. My organization and many of our allies have been equal-opportunity critics of past administrations led by Governors of both parties. When we thought they were right on issues we said so but when we believed they were wrong we were just as vocal. And when we thought they'd failed in legal obligations we've taken action to seek redress. That's not likely to change, under this Governor or any other. It's the way the system is supposed to work.

There should be unified opposition to the erosion of our regulatory structures. These systems will always need strengthening and renovations but they must not be degraded or destroyed. Andrew Wheeler's career in business and government tells us that's exactly what he's likely to do if allowed to wield power over our resource agencies.

Likewise, we have and likely will continue to disagree with and challenge certain Board decisions. We will advocate even greater transparency and responsiveness by those Boards. But, to destroy these vital bodies would be unwise and contrary to the principles of open and accessible government.

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Please act to preserve our common wealth. A system of open, honest, and responsive government, devoted to the wider interests of all Virginians, as opposed to narrow interests, is our right and we must trust that you will defend that right.

Thank you.

Sincerely,

/s/ David Sligh

David Sligh
Conservation Director