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August 31, 2018

Virginia Department of Environmental Quality  
1111 East Main Street, Suite 1400  
Richmond, VA 23219  
Via e-mail to  
[E06@deq.virginia.gov](mailto:E06@deq.virginia.gov)

**Re:** Potomac Riverkeeper Network Comments on Executive Order 6

To Whom It May Concern,

Please accept the following comments on behalf of Potomac Riverkeeper Network (PRKN) regarding Governor Northam's Executive Order 6 (EO6). PRKN appreciates the opportunity to attend the Policy group meetings convened by the Governor's office and Department of Environmental Quality (DEQ) to solicit feedback on EO6, and to provide the additional comments below.<sup>1</sup> We also support the comments submitted by the Virginia Conservation Network regarding Sections B and C of EO6.

As a general matter, PRKN is aware of the significant reductions in funding for staffing and other resources at DEQ over the past several years, and we agree with DEQ leadership that such cuts have led to diminished enforcement and inspection capacity for water permitting, planning and solid waste division regulatory activities. PRKN strongly supports increased funding for restoring DEQ staff levels to the point where the agency has the means and ability to meet its statutory mandate to safeguard the Commonwealth's natural resources. We are prepared to actively support DEQ requests to the Governor and General Assembly to ensure adequate funding for this purpose. In that regard, we commend Governor Northam's April 2018 announcement regarding the need to triple the Commonwealth's funding for natural resource protection.

However, increased funding alone will not lead to a proportionate increase in regulatory compliance or enforcement actions by DEQ staff. The initiative needed to carry out a robust, fair and effective compliance and enforcement strategy must come from the top, and unfortunately this critical element of effective regulation has been sorely lacking at DEQ for some time, based on PRKN's experience. In order for DEQ to meet this standard, the agency and its leadership must make clear that its duty is to serve the public interest and protect Virginia's rich natural resources, not facilitate or acquiesce to the needs of the regulated community in its permitting, rulemaking and compliance activities. DEQ has many dedicated staff and the legal authority to

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<sup>1</sup> PRKN submitted initial comments on Section A.a of EO6 on behalf of the Virginia Conservation Network on June 15, 2018.



do this. What's lacking, at least from PRKN's public interest perspective, is a clear vision, set from the top that elucidates what the agency's primary mission and responsibility is when it comes to environmental protection.

The following comments are organized by issue rather than corresponding to sections of EO6, primarily because PRKN's goal is to provide DEQ and the Governor's staff with specific examples of our experience with DEQ and related recommendations or observations. We have strived to make sure that this feedback is well within the scope of EO6's mandate.

### **Enforcement and Compliance**

PRKN's mission is to protect the public's right to clean water in the Potomac River watershed, and to ensure safe access to our rivers and streams.<sup>2</sup> Within the Commonwealth of Virginia, this means that we are focused on the Virginia shoreline and tributaries of the Potomac, and the Shenandoah River. Our Shenandoah and Potomac Riverkeepers are our frontline advocates for improving water quality in these historic rivers, spending months every year out on the water and in local communities, in order to engage and educate the public and build a constituency of clean water advocates to support our work. This also enables us to identify potential water pollution problems that DEQ may not have the resources or time to have discovered, and report it to DEQ staff. In this regard, our experience with DEQ has varied widely, seemingly dependent on the type of pollution we are reporting.

For example, Shenandoah Riverkeeper (SRK) has established a very positive and productive working relationship with the VPDES permitting staff in DEQ's Valley Regional office. On a roughly biennial basis, SRK reviews the compliance history of major VPDES permittees in the Shenandoah watershed with significant assistance from the permitting staff. If we identify permittees who are demonstrating chronic noncompliance, then SRK may take additional action, up to and including filing a Clean Water Act citizen suit. While we could do this work without the assistance of DEQ staff, their cooperative approach makes the process much more efficient and productive. Our goal on this effort is to identify permittees whose actions may be significantly affecting water quality in the Shenandoah, and to complement any efforts DEQ is making on compliance and enforcement in this region. PRKN greatly appreciates the Valley office staff's approach to their work, and their willingness to facilitate our pollution enquiries.

On the other hand, PRKN's experience with coal ash pollution and DEQ oversight has been extremely problematic. Potomac Riverkeeper has been focused primarily on coal ash pollution at Dominion's Possum Point power plant in Dumfries, Virginia. The plant is located on the tidal Potomac in Prince William County, and thus is overseen by the Northern Virginia office of DEQ. While the staff there has been helpful and responsive in terms of providing PRKN and the public with basic information about Possum Point and other permittees in that region,<sup>3</sup> one coal ash incident in particular stands out as our worst experience with DEQ to date. On June 18, 2015 Greg Buppert, PRKN's counsel at Southern Environmental Law Center, emailed Director Paylor to inform DEQ that the second largest coal ash pond at Possum Point, Pond E, had been completely drained.<sup>4</sup> We discovered this following two aerial patrols over the facility in March

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<sup>2</sup> For more about our work, visit our website at [www.prknetwork.org](http://www.prknetwork.org)

<sup>3</sup> PRKN has also been heavily involved in the City of Alexandria's Long Term Control Plan process, and the legislative campaign that led to passage of a state law mandating completion of sewer system upgrades to comply with the Clean Water Act by July 2025.

<sup>4</sup> See June 15 email from Greg Buppert to David Paylor, included herein as Attachment A.

and June 2015, which showed that during that time the entire pond had been drained of water. At the time, Director Paylor indicated his belief that no coal ash pond water had been discharged to

state waters.<sup>5</sup> However, PRKN subsequently discovered that Dominion had drained at least half the volume of the pond, approximately 27 million gallons, into an unnamed tributary and marsh connected to Quantico Creek and the Potomac River. This water was discharged without any treatment to remove harmful coal ash metals that are known to be present at high levels in untreated coal ash pond water. A description of the Pond E draining activity was included in an engineering report that was part of Dominion's application for modification of its VPDES permit for Possum Point, to allow dewatering of Pond D, the largest coal ash pond at the site.<sup>6</sup> In a letter to DEQ, Dominion subsequently asserted that the draining of the Pond into Quantico Creek was in compliance with the facility's NPDES permit.<sup>7</sup> PRKN reviewed the permit and disputed Dominion's assertion with DEQ. We also requested additional explanation from DEQ staff as to their knowledge of the Pond E draining and their rationale for agreeing with Dominion that this did not constitute illegal dumping of coal ash wastewater into state waters, in violation of the Clean Water Act and state law.

Over the following several months, DEQ responded both by email and in public statements, including DEQ testimony at a Prince William County Board of Supervisors hearing in 2016. DEQ's responses were inconsistent, contradictory and often added to the confusion over when and how DEQ staff learned of Dominion's actions, and the agency's rationale for defending the pond draining as a normal activity under the permit. As a result, PRKN submitted a detailed report to EPA's Criminal Investigation Division, requesting that EPA investigate Dominion's draining of Pond E.<sup>8</sup> EPA initiated an investigation shortly thereafter, but PRKN is unaware of its current status. Dominion's VPDES permit for Possum Point was modified to allow for the dewatering of Pond D in January 2016, and no enforcement action was taken by DEQ in response to the draining of Pond E.

PRKN's goal in describing this incident is not to rehash old grievances or personally criticize DEQ staff, but to point out that our reporting of what we considered to be an extremely serious pollution incident into the Potomac River resulted in a response from DEQ that failed to provide clear answers about what had occurred at Possum Point, when DEQ became aware of it, and why the agency was unwilling to hold Dominion accountable, or at a minimum require additional disclosure and details from Dominion about its actions. No sediment sampling in the unnamed tributary and marsh into which the dumping occurred was ever required, and only limited water sampling of Quantico Creek was conducted following this incident. To our knowledge, homeowners living near the Pond E discharge were never contacted to enquire as to whether they had seen anything unusual. This despite the fact that some homeowners living near the discharge reported discoloration of the marsh and high water levels during this time, and expressed their concern about how this might affect their drinking water wells.

When something like this occurs, DEQ has a responsibility to the public to follow up with the permittee, find out what happened, and provide this information to the public in a timely,

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<sup>5</sup> *Id.*

<sup>6</sup> Phillip Musegaas of PRKN referenced the engineering report in testimony given at the January 2016 State Water Control Board hearing regarding the modification of Possum Point's VPDES permit.

<sup>7</sup> See February 8, 2016 letter from Cathy Taylor, Dominion Energy Services to Susan Mackert, DEQ, included herein as Attachment B.

<sup>8</sup> See January 16, 2016 E-mail from Dean Naujoks, Potomac Riverkeeper, to Doug Parker, EPA, included herein as Attachment C.

transparent way. Instead, what occurred was a frequently shifting account of DEQ's awareness of the incident and its rationale for deciding that no permit violation had occurred. The way this was handled by DEQ raises serious questions about the agency's independence, and willingness to aggressively investigate reports of pollution incidents from the public. PRKN urges the

Secretary of Natural Resources and DEQ leadership to conduct a thorough review of this incident and DEQ's current approach to investigating pollution reports, and make any changes necessary to ensure that future pollution incidents are responded to in a transparent, timely and defensible manner that builds, rather than erodes trust in DEQ's ability to protect Virginia's environment.

### **Environmental Justice**

In its preamble, EO6 notes the fact that "Despite progress to reduce pollution, many Virginians, particularly those in urban and rural low income or minority communities, do not enjoy clean air and water for outdoor recreation and daily activities."<sup>9</sup> However, a review of DEQ's website failed to find any mention of the topic of environmental justice, even in the Community Involvement page, where you could assume it would be prominently featured.<sup>10</sup> Based on our review, the only place the public would find any reference to this critically important topic is in the Glossary, which includes a definition of "Environmental Equity/Justice." This is frankly embarrassing and shameful, and must be rectified, either through this EO6 process or apart from it. Environmental justice and equity is founded on inclusivity and fairness. The fact that there is no mention of it on DEQ's public facing website exemplifies one of the many challenges that low income or minority communities face; lack of recognition and lack of acknowledgment that these communities often suffer disproportionate effects of water and air pollution.

PRKN and Appalachian Voices request that DEQ create an easy-to-find page on the DEQ website that explains clearly to the public DEQ's policies and guidance on implementing and enforcing environmental laws and regulations such that no community bears a disproportionate impact of pollution, especially due to race, socio-economic status, or political influence.

### **Conclusion**

PRKN appreciates this opportunity to provide feedback to the Secretary of Natural Resources and DEQ under the framework of the EO6 mandate. Our goal in engaging in this process is to describe our organization's experiences, both good and bad, with DEQ and to explain why and where improvement is needed. We appreciate the hard work and responsiveness to the public that we have seen from many DEQ staff we have worked with, and we hope to find new areas of collaboration in the future. In the long run, we cannot achieve our mission of protecting and restoring the Potomac and Shenandoah Rivers without the support of DEQ. Conversely, DEQ will be much more successful in its work to protect the Commonwealth's rich natural resources when it embraces its role as Virginians' environmental steward, and is able to dispel any notion that the needs of the regulated industry take precedence over public health and the environment.

Please do not hesitate to contact me by email, [phillip@prknetwork.org](mailto:phillip@prknetwork.org), or phone, 202-888-4929 if you have any questions regarding these comments.

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<sup>9</sup> EO6 at 1.

<sup>10</sup> See <https://www.deq.virginia.gov/ConnectWithDEQ/CommunityInvolvement.aspx>

Respectfully,

A handwritten signature in cursive script that reads "Phillip Musegaas". The signature is written in dark ink and is positioned above the printed name and title.

Phillip Musegaas  
Vice President of Programs and Litigation