

## Finding the right solution

### ***DEQ director says site-specific approach often works best***

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by Robert Powell



Tim Kaine is a Democrat and Bob McDonnell is a Republican, but as governors they agreed on at least one thing. Each appointed David K. Paylor director of the Virginia Department of Environmental Quality, the state's environmental regulatory agency.

Paylor, 59, was named to the job in 2006 by Kaine and reappointed by McDonnell in 2010. The two governors have similar approaches to environmental regulation, Paylor says. "What we've done here at DEQ for a long time now is to focus on being problem solvers," he explains. "That is really what all the governors I have worked for have really valued."

The DEQ director seeks solutions that allow the state economy to grow while protecting the environment. "I think we need to look for models of government that reward success and that provide flexibility for site-specific solutions to problems rather than for one-size-fits-all," he says. "The limitation of a regulatory construct is that it isn't able to take into account the unique situation that a facility might find itself in."

Paylor has spent nearly 40 years in state environmental regulation, beginning as a summer intern with the State Water Control Board in 1973. He joined the agency full time as a field biologist in 1976 after graduating from Duke University with a degree in zoology and getting a master's from Oregon State University in fisheries science.

Since then he has held a variety of positions with DEQ, including aquatic ecologist, water resources manager, director of petroleum programs and director of operations. He was deputy secretary of natural resources during Mark Warner's term as governor and is a former president of the Environmental Council of the States.

In assessing Virginia's environmental health, Paylor stresses that progress has been made, but often residents don't realize it because of changing standards. He notes, for example, that a decade ago, a "bad air day" was defined as ozone concentrations over 120 parts per million. Now that standard is 75 parts per million. "The trends are all in a positive direction even though we keep talking about bad air," he says. "That's because we keep redefining the standard and making it more and more protective. I want people to understand that we're continuing to improve air quality."

Away from the office, Paylor enjoys camping, canoeing, kayaking and woodworking. "I make hardwood furniture — beds, desks, tables, mainly just for my family," he says.

He and his wife, Lesa, have two children, Kelsey, a freshman at James Madison University, and Grant, a sophomore at Lee-Davis High School. Virginia Business talked with the DEQ director in early February at his office in downtown Richmond.

**Virginia Business:** What is the current state of the air and water quality in Virginia?

**Paylor:** They're improving ... You hear a lot about claims of failures that we've had in the Chesapeake Bay cleanup. I certainly don't discount that we still have a lot of work to do. And it has taken us a long time to get here because we probably started in the mid-1980s with the Chesapeake Bay cleanup. But we've had an awful lot of growth in population that we've been sort of fighting against as well.

We have met between 60 and 70 percent of the reduction goals for nitrogen and phosphorus of the bay up to this point. So when you hear there has been no progress and there has been failure, I guess the message I'd like to have is that there is progress, and there is commitment, and we do have more work to do because the bay is still in an unsatisfactory condition. But I think it's very clear that we're headed in the right direction ...

From 1976 to about the early 1980s at least, much of my job was to investigate fish kills. We used to have 250, 300 fish kills a year, many of them the result of industrial or even municipal plant upsets and that sort of thing, and inadvertent discharges. We just don't see that kind of thing anymore.

If you look back to some of the newspaper articles that we even had in the [Richmond] Times-Dispatch about the condition of the James River in the 1950s, it would get referred to as an open sewer, and that's just not the condition that we have right now.

For air, ozone is the principal pollutant that you hear about for the air quality index. When the weatherman talks about whether you've got a good-air day or a bad-air day, it's ozone that he's talking about. And those trends are way down.

A bad-air day a decade ago was ozone concentrations over 120 parts per million. Then the standard got changed to 85 parts per million. So what was good air became bad air again. Then we got ourselves below the 85, and now the standard is 75. We're actually almost meeting the 75 [standard]. The trends are all in a positive direction even though we keep talking about bad air. That's because we keep redefining the standard and making it more and more protective. I want people to understand that we're continuing to improve air quality.

**VB:** What are the biggest obstacles that DEQ faces in improving the environment?

**Paylor:** One of the biggest obstacles is that we have 50 percent more people in the commonwealth now than we had in the 1950s. There's a lot more impervious surface.

It's a lot more wastewater to be treated. We have just all of the issues that come along with more people in the state.

A lot of our issues, in terms of our water issues, are from a more diffuse pollution source — runoff from more acreage and the way we protect our waters from land use changes. Those are big ones.

Funding is a huge issue as well. By the time it's all done, the Chesapeake Bay cleanup just on the point-source side, is going to cost \$3 billion of state and local monies. [A point source is a single identifiable source of pollution, usually a pipe that empties into a river or stream.] The agricultural and storm-water runoff base is going to be more than that. So having to find the money to deal with some of the pollution reductions for nitrogen and phosphorus is a huge deal. We're looking to the federal government to help with that. They have helped, but I would characterize their help as incremental relative to the burden that has fallen on the states. It's a must-do thing, but it's a very expensive thing. So that's a challenge, not just for state monies but local monies and the business community as well.

I would say a challenge going forward is: We've accomplished an awful lot in the last 30 or 40 years based on a government model that focuses on regulations. But at some point, it becomes harder and harder to squeeze additional progress out of that regulatory model. I don't think we can abandon the need for regulations, but on the other hand, I think we need to look for models of government that reward success and that provide flexibility for site-specific solutions to problems rather than one-size-fits-all. The limitation of a regulatory construct is that it isn't able to take into account the unique situation that a facility might find itself in.

As a government, we need to be enabling that kind of creative thinking ... I actually chaired a federal advisory committee a couple of years ago to talk about how we can incentivize this sort of thing. It's a paradigm shift, and it comes slowly. Some of the larger members of the business community really have gone beyond the regulations to the point that the regulations are a backdrop, just sort of a given. They're trying to figure out how to solve even more global issues that have to do with the global marketplace. So a lot of our larger businesses are in some ways getting ahead of some of the regulatory processes that we have in government. One of our challenges is to catch up with that and to be more nimble and more dynamic in solving some of our environmental problems.

**VB:** You were appointed to your position by Governor Kaine and then reappointed by Governor McDonnell. Do the two administrations have different approaches?

**Paylor:** What both administrations really looked to DEQ to do is to fairly and objectively administer the law and the regulations. Both administrations were very focused on the fact that we have been the No. 1 state in which to do business [according to rankings by CNBC and Forbes.com].

So what we've done here at DEQ for a long time now is to focus on being problem solvers. That is really what all the governors I have worked for have really valued.

By problem solvers, I mean that when the business community comes with an issue, we work with them to understand the business needs and to translate the regulatory and legal requirements in such a way that we can find a way for them to protect our air and water, comply with our laws and still meet their needs.

I think when you hear that environmental regulatory agencies have a bad reputation, it's because they don't do that, and they just sort of default to "no, you can't do it that way" as opposed to having a discussion about how can we get to a solution that works for you, that keeps you in compliance with the law and protects the air and water. So that has been consistent through all the administrations that I've worked with.

The other thing that [governors] have asked for and that we insist on is customer service, an open door to all of our stakeholders, to the citizens of the commonwealth, the environmental organizations, the business organizations. We try to be open and responsive to all of them and to fairly and objectively administer our responsibilities under the law.

**VB:** Do you find the business community easier to work with than the environmental community on something like this?

**Paylor:** Not really. They have different perspectives. That's part of the whole problem-solving piece. Part of the issue for both the business community and the environmental community is explaining what the rules are and why they're that way.

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Our task at DEQ is to administer the laws as they are and not as people might wish they would be. If the laws and regulations are insufficient, then we work through stakeholder processes where we have businesses and environmental organizations at the table to try to figure out how we redesign regulations so that we can meet the goals. Even in that process of designing the rules, we find that when we get those stakeholder groups together, and we problem solve together, I'm going to say 85 to 90 percent of the time we can come up with regulations that everybody around the table can agree to.

One example I might point to is called the permit by rule for renewable energy. A couple of years ago the General Assembly asked us to develop some regulations to incentivize renewable energy. We got the business community and the environmental community around the table and put together a set of rules for wind energy in Virginia. I'm really, really proud of those rules because you will find that most of the environmental community and, as far as I know, all of the business community, support those rules. I think we may have some of the most protective rules from an environmental perspective in the country for that particular activity. And we have streamlined the process for getting the permit. The business community loves it because they have certainty. They know what the rules are. They know what they need to do. They know if they comply with those rules, they can move forward.

We've really found that we can work together with all of those stakeholders in a way that the majority of the time, the vast majority of the time, we end up in the right place for the environment and with a lot of stakeholder agreement about how we're going about it.

**VB:** I noticed you've been president of a national organization.

**Paylor:** Environmental Council of the States.

**VB:** Is your approach similar to what other states do?

**Paylor:** I think there's a wide range. There are a whole lot of states that have a similar approach to us, certainly not all states. ...

The members [of the Environmental Council of the States] are the environmental directors of the 50 states. Our primary focus is to collaborate with EPA to try to keep a strong state-federal partnership so that all of the states and EPA are pulling in the same direction...So we have differences of opinion, but they get honestly discussed, and we more often than not find a common ground and a way to move forward.

**VB:** You mentioned the Chesapeake Bay earlier. How is Virginia doing on its milestone commitments [to lower pollutants flowing into the bay]?

**Paylor:** We're actually meeting our milestone commitments right now. Much of that is because on the point-source side, the wastewater side, we've invested quite a bit of state and local money in upgrades over the last 10 years. So we've actually gotten extra reductions from that sector early.

That right now is offsetting the fact that we're just coming up to speed on some new requirements for urban storm water and for agriculture. So those programs are starting to pick up now. But we project that at least for the next few sets of milestones, we expect to be there. As as we get closer and closer to 2025, the challenges are going to be tougher and tougher.

I mentioned that there is a fiscal burden. The farm community in particular is going to have to have some financial assistance to be able to be successful with the practices EPA wants them to put in place. So the commitment is real, and the costs are real. We're going to have to continue to search for ways to fund some of these things, too.

**VB:** Is your agency getting enough funding to fulfill its responsibilities?

**Paylor:** We're meeting our core responsibilities. The challenge of effectively managing any agency is setting priorities. With the economic downturn that we've experienced and the effect that has had on staffing, we've had to change our priorities. [The number of salaried employees at DEQ has dropped about 14 percent since 2008.] So not everything is getting done that was getting done, but I would have to say that our core responsibilities are still being met.

Part of that has necessitated our continuing to look for ways to be more efficient. We're developing a more flexible work force that can be less specialized and do different kinds of work. You might have somebody who has worked for 20 years in water, and they're going to have to learn a little bit about solid-waste management to help us with some priorities. Those are some other ways we have met the reduction in resources.

Actually 80 percent of this agency now is funded through other-than-taxpayer dollars. Only 20 percent of our budget now is dependent on general funds or taxpayer funds. The other 80 percent is made up of some fee-funded programs and federal grants.