



## Virginia Environmental Law

### Virginia leadership challenging EPA...again.

By: Ann Neil Cosby. *This was posted Wednesday, April 21st, 2010*

And it may be a foreshadowing of more to come.

Earlier this year, Virginia Attorney General Kenneth T. Cuccinelli, II, [filed a suit against the EPA](#) calling into question certain data upon which some global warming regulations were based.

At a press conference yesterday, two Virginia legislators, state senator Ryan T. McDougle (R-Hanover), and delegate Timothy D. Hugo (R-Fairfax) [called into question EPA data](#) related to percentage increases in impervious surface areas. The data, which indicates that from 1990 to 2000, impervious surfaces in the Chesapeake Bay watershed increased by 41% while the population increased 8%, has been cited by EPA and state regulators as a reason for strengthening [Virginia's Stormwater Regulations](#). The amendment of those regulations remains an ongoing, at times divisive, process in Virginia, and one that I have written about [here](#) and [here](#).

The [EPA](#) responded to the legislators issuing a statement reported by the Richmond Times-Dispatch that said, in part, that the statistic on population and impervious surface from 1990 to 2000 was generated using the best data and analysis available.

But this current challenge to EPA's data on impervious surfaces may only be a foreshadowing of the groundswell to come.

During their press conference, Senator McDougle and Delegate Hugo also called on the EPA to "use sound science and accurate data, research and analysis" in developing the 5.3 Chesapeake Bay model. The 5.3 Chesapeake Bay model will be used by EPA to set the target loads for nitrogen and phosphorus that the Chesapeake Bay states, including Virginia, will be required to meet in order to comply with the [stringent Bay cleanup requirements](#) that were set into action by Executive Order 13508 issued in May 2009, and which we have written about [here](#) and [here](#).

<http://vaenvironmentallaw.com>

[Richmond](#) • [Blacksburg](#) • [Fredericksburg](#) • [Research Triangle](#) • [McLean](#)

Copyright Sands Anderson Marks & Miller, PC.

THE INFORMATION CONTAINED IN OUR WEB SITE DESCRIBES LEGAL MATTERS HANDLED IN THE PAST BY OUR ATTORNEYS. OF COURSE, THE RESULTS WE HAVE ACHIEVED DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. BECAUSE EACH MATTER IS DIFFERENT, OUR PAST RESULTS CANNOT PREDICT OR GUARANTEE A SIMILAR RESULT IN THE FUTURE.

We will have to wait and see whether Virginia's leadership will accept the data ultimately used by EPA to set the total maximum daily loads (TMDLs) for the Chesapeake Bay, but I can anticipate where that data too will be heading. Ironically, one may not have to look very far to find cause to question EPA's modeling. At the [Environment Virginia Symposium](#) held at VMI earlier this month, during a presentation on model updates, EPA publicized that "Watershed Phase 5.3 is here!" and its "Scenario builder is built... And working!" but then immediately recanted and admitted that the models need more work. An April 15, 2010 meeting of the Chesapeake Bay TDML Stakeholders Advisory Group was then cancelled because EPA had not yet finalized the elements of the Bay model, and Virginia was in a position of not knowing what its allocations would be.

Can you feel the storm brewing? What must EPA do to prevent a challenge from Virginia to its Chesapeake Bay modeling data? Do you think future battles loom on the horizon?

<http://vaenvironmentallaw.com>

[Richmond](#) • [Blacksburg](#) • [Fredericksburg](#) • [Research Triangle](#) • [McLean](#)

Copyright Sands Anderson Marks & Miller, PC.

THE INFORMATION CONTAINED IN OUR WEB SITE DESCRIBES LEGAL MATTERS HANDLED IN THE PAST BY OUR ATTORNEYS. OF COURSE, THE RESULTS WE HAVE ACHIEVED DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. BECAUSE EACH MATTER IS DIFFERENT, OUR PAST RESULTS CANNOT PREDICT OR GUARANTEE A SIMILAR RESULT IN THE FUTURE.